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SUPREME COURT OF VIRGINIA
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RICHMOND, VIRGINIA

IN THE

Supreme Court of Virginia

AT RICHMOND

No. 741248

SUTTLE MOTOR CORPORATION,

Appellant

v.

CITIZENS BANK OF POQUOSON,
now the FIRST VIRGINIA BANK OF THE PENINSULA,

Appellee

APPENDIX

Harry J. Kostel
Richard S. Gordon
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(Caption Omitted)

MOTION FOR JUDGMENT

The Plaintiff would respectfully show unto this Honorable Court the following:

1. That the Defendant, Batts & Hockaday Motors, Inc., purchased two automobiles from the Plaintiff and in payment therefor tendered to Plaintiff a draft dated October 18, 1972 in the amount of $6,800.00 and a draft dated November 14, 1972 in the amount of $4,000.00, both of which said drafts were drawn on the Defendant, Citizens Bank of Poquoson.

2. That the Plaintiff deposited the said drafts in its account at United Virginia Bank/Citizens & Marine and the drafts in the due course of business were forwarded to the Defendant, Citizens Bank of Poquoson.

3. That the Citizens Bank of Poquoson held the drafts for an unreasonable length of time without giving the Plaintiff any notice of dishonor before finally returning the drafts to the Plaintiff's bank as uncollected.

4. That the Defendant, Batts & Hockaday Motors, Inc., is liable to the Plaintiff in the amount of TEN THOUSAND EIGHT HUNDRED & 00/100 DOLLARS ($10,800.00) by reason of the unpaid drafts and the Defendant, Citizens Bank of Poquoson, is also indebted to the Plaintiff in the

amount of TEN THOUSAND EIGHT HUNDRED & 00/100 DOLLARS ($10,800.00) by reason of its failing to give timely notice of dishonor to the Plaintiff and also by withholding the said drafts for an unreasonable length of time.

WHEREFORE, Plaintiff moves this Honorable Court for judgment against the Defendants jointly and severally in the amount of $10,800.00 plus interest plus the cost of this proceeding.

SUTTLE MOTOR CORPORATION

By: Harry J. Kostel
Of Counsel

(Caption Omitted)

ANSWER

Comes now the defendant, Citizens Bank of Poquoson, by way of answer to plaintiff's Motion for Judgment and says:

1. The allegations of Paragraphs 1 and 2 are denied except insofar as they allege the drafts in the amounts of $6,800.00 and $4,000.00 respectively were drawn on the Citizens Bank of Poquoson, and with respect to those parts of the allegations denied, defendant, Citizens Bank of Poquoson, does demand strict and convincing proof of each and every such allegation.

2. The allegation in Paragraph 3 is denied and defendant bank does demand strict and convincing proof of each and every allegation.

3. The allegations in Paragraph 4 are denied insofar as they allege that defendant bank is indebted to plaintiff in the amount of $10,800.00, and further, insofar as they allege that defendant bank did fail to give timely notice of dishonor to plaintiff and did withhold said drafts for an unreasonable length of time, and with regard to each such allegation, defendant bank does demand strict and convincing proof thereof.

4. Defendant bank will further rely upon any and all defenses which may arise prior to or during the course of trial.

WHEREFORE, having answered plaintiff's Motion for Judgment, defendant bank moves that the action against it be dismissed and the defendant bank be awarded the costs herein expended to substantiate the claim.

CITIZENS BANK OF POQUOSON

By: James E. Bradberry
Of Counsel

(Caption Omitted)

ORDER

On August 8th, 1974, by agreement of all parties concerned, the above captioned cases were consolidated and the Court heard argument and evidence of the cases and withheld its decision and opinion until a later date. This date the Court having maturely considered the evidence and argument of counsel, it is considered by the Court that the plaintiff in the case of Maceo Jones v Batts & Hockaday Motors, Inc. et al. recover against the defendant Batts & Hockaday Motors, Inc. the sum of Two Thousand Dollars ($2,002.00), with interest in the amount of eight (8%) percentum per annum, until payment and his costs by him about his suit herein expended. In lieu of a money award for punitive damages it is ordered that Batts & Hockaday Motor, Inc. execute the title to the Pontiac over to Maceo Jones and it is further ordered that the title be executed showing the lien of the First Virginia Bank of Peninsula who was the predecessor of the Citizens Bank of Poquoson. It is further ordered that Judgement be awarded for the third (3rd) party defendants Citizens Bank of Poquoson, First Virginia Bank of Peninsula and Suttle Motor Corporation against the defendant and third (3rd) party plaintiff Batts & Hockaday Motors, Inc. take nothing

by reason of its said third (3rd) party motion for judgement but for its false clamour be in mercy, etc., and the third (3rd) party defendants go thereof without day and recover against the said defendant and third (3rd) plaintiff their cost by them herein expended. It is further Ordered that Maceo Jones, resume his payments with the First Virginia Bank of Peninsula and the First Virginia Bank of Peninsula not charge any deliquent [sic] charges on his account. These payments are to start once Mr. Jones has received the title of this car.

In this case of Suttle Motor Corporation v Batts & Hockaday Motors, Inc. and Citizens Bank of Poquoson it is Ordered that the plaintiff Suttle Motor Corporation recover against the defendant Batts & Hockaday Motors, Inc. the sum of Ten Thousand Eight Hundred Dollars ($10,800.00), with interest in the amount of eight (8%) percentum per annum from August 23, 1974, until payment and its costs by it about its suit herein expended and it is further Ordered that judgement be awarded the defendant Citizens Bank of Poquoson against Suttle Motor Corporation and that the plaintiff Suttle Motor Corporation take nothing by reason of said Motion for Judgement against Citizens Bank of Poquoson but for its false clamour, in mercy, etc. and that the defendant Citizens Bank of Poquoson go thereof without day and recover against the plaintiff its costs by it herein expended.

It is further Ordered that judgement be entered up in favor of Citizens Bank of Poquoson in the case of Batts & Hockaday Motors, Inc. v Citizens Bank of Poquoson on the crossclaim filed by Batts & Hockaday Motors, Inc. Therefore, it is considered by the Court that Batts & Hockaday Motors, Inc. take nothing by reason of their crossclaim against Citizens Bank of Poquoson but for their false clamour, be in mercy, etc., and that the said Citizens Bank of Poquoson go thereof without day and recover against the said Batts & Hockaday Motors, Inc. its costs by it herein expended.

DOUGLAS M. SMITH
Judge

(Caption Omitted)

NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR

The Plaintiff, Suttle Motor Corporation, by its attorney, hereby gives notice, pursuant to the provisions of Rule 5:6 of the Rules of the Supreme Court of Virginia, of its appeal from that certain Final Order entered in the above-styled cause on August 26, 1974, in which the Motion for Judgment of Suttle Motor Corporation against the Citizens Bank of Poquoson, now the First Virginia Bank of the Peninsula, was not granted, and the Citizens Bank of Poquoson recovered their costs against the Plaintiff.

Further, pursuant to the said Rule, Plaintiff assigns the following errors:

1. The Court erred as a matter of law in not granting judgment in favor of Suttle Motor Corporation against Citizens Bank of Poquoson on the grounds that the allegations contained in said Motion for Judgment had not been sustained by the proof.

2. The Court erred as a matter of law and fact in holding upon the evidence presented that the Citizens Bank of Poquoson did not fail to reasonably notify its customer in due course of non-payment or non-acceptance of the two documentary drafts which are the subject of the instant litigation.

3. The Court erred as a matter of law and fact in holding upon the evidence presented that the Citizens Bank of Poquoson was not guilty of negligence in the handling of the two documentary drafts which are the subject of the instant litigation.

A transcript will be furnished and filed with the aforesaid Court.

SUTTLE MOTOR CORPORATION

By: Richard S. Gordon
Of Counsel

it and get into pretty much the --

THE COURT: Let's get him on the stand, then we can stipulate everything we need to stipulate. Let's call up all the witnesses you have for Maceo Jones or anybody else.

(All witnesses were sworn, and separated with the exception of parties to the suit.)

THE COURT: Wait a minute. Before we get too far now, in this third-party motion that First Virginia Bank of the Peninsula is also a party defendant, is anyone representing them?

MR. BRADBERRY: Yes, sir. Citizens Bank and First Virginia Bank of the Peninsula are one and the same. They merged and we represent them.

THE COURT: I understand that. But you represent them?

MR. BRADBERRY: Yes, sir.

THE COURT: All right, sir. Excuse me.

(At this point, Maceo D. Jones testified, and his testimony is not transcribed herein.)

MR. FOX: Judge, we would call the representative of Batts & Hockaday, unless we can stipulate when this car was sold to Mr. Jones, that they did not have the title and have at no time, from that time until today, ever had the title. Do we agree to that?

MR. COGDILL: No. Put him on the stand.

MR. FOX: You're not going to stipulate that they, you didn't have the title at the time it was sold?

MR. COGDILL: No.

(Off record discussion)

THE COURT: What is the stipulation now?

MR. FOX: Batts & Hockaday did not have the title at the time they sold the car to Maceo Jones, and that they have, in fact, never had the title to this car from the time of the sale up to the present.

DAVID W. FORREST, called as an adverse witness by Plaintiff Maceo Jones, after being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. WITTAN:

Q State your full name.

A David Warren Forrest.

Q What is your occupation?

THE COURT: I did not get your last name.

THE WITNESS: Forrest, with two R's.

BY MR. WITTAN:

Q What is your occupation?

A Banker.

Q What is your position with the bank?

A Assistant Vice President, First Virginia Bank of the Peninsula, formerly Citizens Bank of Poquoson.

Q What was your employment in November 1972?

A Assistant Vice President, Citizens Bank of Poquoson.

Q Mr. Forrest, are you familiar with a note and a chattel mortgage that have been earlier introduced by your counsel, regarding Maceo Jones?

A Yes, sir.

Q And are you familiar with the records of the bank, so that you can testify whether or not the money that was borrowed by Mr. Jones was ever credited to the account of Batts & Hockaday?

A The Batts & Hockaday demand account ledger will testify to that, if I can refer to the bank account ledger?

Q Yes. Is this the ledger that you were referring to?

A Yes.

Q Now, refreshing your memory or by looking at the ledger, Mr. Forrest, can you tell us, with respect to the transfer of funds, subsequent to your receipt of the note and chattel deed of trust signed by Mr. Jones, in other words, what was done with the money Mr. Jones borrowed?

A The funds from the contract that we received from Batts & Hockaday Motors and signed by Mr. Jones, the proceeds were deposited to Batts & Hockaday Motors.

Q And can you tell me the amount that was deposited to their account?

A We have -- wait a minute. It's $4100, was deposited November 17, 1972.

CROSS EXAMINATION

BY MR. COGDILL:

Q Prior to that time, were you familiar with the bank records as to whether or not you received a draft pertaining to the title of this car?

A No, sir.

Q You did not? You deny that you had knowledge that there was a draft in the bank at the time you made a deposit?

A I acknowledge there were several drafts in the bank, yes, sir.

Q You deny?

A No. I acknowledge.

Q Do you acknowledge this was one of the drafts which was in the bank at that time?

A I learned later, yes, sir, it was.

Q When did you learn later?

A After the draft was returned to the sender, which was United Virginia Bank - State Planters, and the suit filed, eventually we learned one of the drafts contained a title to the car that had been bought by Maceo Jones.

Q During the dealings with Batts & Hockaday over the years -- 1972 -- this was November 1972 --

was it a practice with the bank that when the drafts came in from Batts & Hockaday, that you call Batts & Hockaday?

A We would inform Batts & Hockaday that they were there, yes, sir.

Q Who is "we"?

A The bank, Citizens Bank of Poquoson.

Q And who, specifically, at the bank would inform them?

A Most of the times, it would have been myself, but in my absence it would have been Mr. Riggins.

Q In this case, did you inform Batts & Hockaday that a draft had arrived for that car?

A I informed Batts & Hockaday drafts had arrived, but I didn't know it was this particular title.

Q Who did you notify at Batts & Hockaday?

A Both Mr. Whitehead and Mr. Sweeney.

Q And did they examine those drafts?

A Yes, sir.

Q Did they inform you that draft was a draft containing the title to the Pontiac that you had financed to Maceo Jones?

A No, sir.

Q At the time that this draft arrived, did anyone check this draft for you, at Batts & Hockaday?

A They checked the envelope, yes, sir.

Q Okay. What discussion took place?

A They were asked to pick the draft up and they said that they would and that was the extent of it.

Q What do you mean, "pick the draft up"?

A Pay for the draft.

Q How much money was on deposit at that time in the bank?

A I have no idea.

Q I see. And you said that that was when?

A The deposit was made to Batts & Hockaday Motors on November 17, 1972.

Q And was it the usual practice that Batts & Hockaday picked up drafts that came into your bank or were they paid for out of the bank account?

A Batts & Hockaday Motors would pick the draft up and they would pay for them sometimes by check, yes, sir.

Q Pay for them by check?

A Sometimes, yes, both by check and by debit to their Batts & Hockaday account.

Q When they checked this draft, do you have any idea how much money was in the bank?

A No, sir.

Q Okay. Did you ask them to go ahead and give you a deposit?

A No, sir.

Q Were you aware -- how long did you usually hold the drafts until you returned them back to the sender?

A Until I was authorized by someone from Batts & Hockaday to pay the draft.

Q You would hold a draft that came in for some considerable period of time?

A Until I was told by someone from Batts & Hockaday Motors that I could pay the draft.

Q That was the policy?

A Yes, sir.

Q And that had been the policy during all your dealings with Batts & Hockaday?

A Yes, sir.

Q Do you ever remember having a discussion with a Mr. Whitehead that all drafts were to be paid within five days or returned?

A No, sir.

Q You deny that?

A Yes, sir.

Q Okay. Do you remember talking to Mr. Whitehead on the occasion that this draft came down, didn't you?

A That specific draft, I cannot recall. All of the drafts that came to the bank on any occasion were discussed with Batts & Hockaday Motors.

Q All right, sir. Now, do you remember specifically discussing this specific deal with Mr. Whitehead?

A You'll have to define "deal," sir.

Q All right, sir. This transaction, when he brought the bill of sale, the note, chattel mortgage and everything to the bank to be financed.

A No, sir. I do not recall.

Q Okay. You don't recall any discussion with him about this?

A Your question, sir, I believe was, when he brought the contract on Maceo Jones, if he discussed it with me, and my answer was I did not recall.

MR. COGDILL: I think that's all the questions I have.

BY MR. BRADBERRY:

Q Mr. Forrest, do you recall the day on

which the draft involving Maceo Jones' vehicle arrived at the bank?

A It was sometime in the latter part of October, I believe.

MR. KOSTEL: November 30, isn't it?

MR. BRADBERRY: Yes. That's what I am getting to. There's no disagreement on that?

MR. KOSTEL: No, sir.

BY MR. BRADBERRY:

Q It would have been November 30 it was received?

A Yes, sir.

MR. KOSTEL: I think he testified on discovery it was November 30.

MR. BRADBERRY: There are two drafts we're talking about. He got confused.

MR. KOSTEL: Talking about November 30, 1972.

BY MR. BRADBERRY:

Q So the draft was received by your bank after you had credited Batts & Hockaday with the $4100, was it not?

A Yes, sir.

Q And at the time you gave Batts & Hockaday credit for the money, you had no knowledge that you did not have a draft or title in the bank; is that not correct?

A Yes, sir.

Q Would you have had knowledge of that specific title, even if you had a group of drafts for Batts & Hockaday to pick up?

A No, sir.

MR. KOSTEL: Objection to that.

MR. BRADBERRY: On what grounds?

MR. KOSTEL: It's leading.

MR. BRADBERRY: It's on cross examination.

THE COURT: No. He's still your witness. You can't lead him.

BY MR. BRADBERRY:

Q Mr. Forrest, state who was responsible for handling the drafts with Batts & Hockaday Motors.

A It's Mr. Sweeney or Mr. Whitehead.

Q And who at the bank dealt with Mr. Sweeney and Mr. Whitehead?

A Primarily myself.

Q What was your procedure when a documentary draft arrived at your bank, drawn on Batts & Hockaday?

A I would notify someone from Batts & Hockaday that we had received a draft.

Q Why didn't the bank simply pay the draft?

A We had no authorization to pay the draft.

Q From whom did the authorization come?

A From someone from Batts & Hockaday Motors.

Q Why was authorization from Batts & Hockaday Motors necessary?

A Because it was a collection item.

Q Would you explain a collection item? What do you mean by that term?

A It wasn't a demand or a check like we would issue payable to cash and on presentation at the bank we would have to pay, or let me say a check that would come to us through normal banking channels or through the Federal Reserve System, which is clear-cut as to how long we can hold the check and under what conditions we should pay that check. This came outside of

normal banking channels. It came through the mail as a collection item from United Virginia Bank - State Planters and was to be paid by Batts & Hockaday Motors to United Virginia Bank - State Planters.

Q All right. For whom were you acting when you received the draft?

MR. COGDILL: I object. That's the whole crux of the case, whether he was acting on behalf of the bank, Batts & Hockaday, and I think that invades the province of the Court.

MR. BRADBERRY: I think that's a perfectly proper question for a banker to answer, as to who he was acting in behalf of.

THE COURT: I'll allow it.

BY MR. BRADBERRY:

Q Who were you acting for?

A We were acting as collection agent for Batts & Hockaday Motors and for United Virginia - State Planters.

Q What was your duty concerning Batts & Hockaday Motors?

A To inform them that the draft was there and to allow them the opportunity to agree to either pay the

draft or to return it.

BY THE COURT:

Q Wait a minute. What do you mean, "or to return it"?

A Your Honor, the draft was in an envelope which contained papers or titles to automobiles. Someone from Batts & Hockaday Motors would have to open this envelope and inspect the contents of it to see that everything was in order and then authorize me to pay the draft or to return it if everything wasn't in order.

Q All right. Now, who would you return it to?

A To the sender, which, in this case, was United Virginia Bank - State Planters.

MR. BRADBERRY: Mr. Kostel, if you would have no objection, may I use the Maceo Jones draft, the envelope?

BY MR. BRADBERRY:

Q Mr. Forrest, I show you a document which has been handed to me by Mr. Kostel. Would you explain what that document is?

A This is a documentary draft.

Q Describe that specific draft more fully, would you, please?

A It's a documentary draft, dated November 14, 1972, payable to the order of Suttle Motor Corporation, in the amount of $4,000, and payable by Batts & Hockaday Motors, by Donald L. Sweeney.

Q And the date when the draft was made is what?

A November 14, '72.

Q All right. Is that draft an envelope?

A Yes, sir.

Q Upon arrival in your banking facility, was it customary for the envelope to be sealed or unsealed?

A Sealed.

Q Who would break the seal on the envelope?

A Someone from Batts & Hockaday Motors.

Q Why would they break the seal on the envelope?

A Because the envelope contained titles or papers that involved the automobile and they were to inspect them to find out that they were in order before we could either pay or return the draft.

Q So your authority to pay depended upon a grant of authority from Batts & Hockaday?

A Yes, sir.

Q Was there any specific length of time that you customarily kept those?

A No, sir.

Q In your course of dealing with Batts & Hockaday Motors, were drafts kept for varying lengths of time?

A Yes, sir.

Q Can you give us an idea of the length of time involved in payment of drafts?

A It varied anywhere from one, two days to sixty days.

Q All right. Did you have occasion to handle drafts which had originated at Suttle Motor Corporation?

A I could only assume that they originated there.

MR. KOSTEL: What do you mean, that "originated at Suttle Motor Corporation"? I don't understand the question.

MR. BRADBERRY: I'll back it up.

BY MR. BRADBERRY:

Q Were you familiar or did you have occasion to be familiar with the fact Mr. Sweeney bought cars from Suttle Motor Corporation?

A Yes, sir.

Q Were you aware of the fact when he

purchased cars from Suttle Motor Corporation, that he sometimes paid for those automobiles with a documentary draft?

A Yes, sir.

Q All right. When he paid for those automobiles with a documentary draft and the draft came to you for collection, what was your relationship at the Citizens Bank of Poquoson, with Suttle Motor Corporation?

A None.

MR. KOSTEL: I assume you're asking for a relationship from a factual standpoint, and if that be the case, I have no objection.

MR. BRADBERRY: I'm asking for it from a banking standpoint.

MR. KOSTEL: Just a minute, please.

MR. BRADBERRY: All right.

MR. KOSTEL: If you are asking what their factual relationship was, I have no objection, but if he is calling on this man to give a legal conclusion as to the relationship between that bank and Suttle Motors, I object to it.

MR. BRADBERRY: No. I'm asking for the relationship in the normal course of banking,

Judge.

THE COURT: Well, I'll let him answer what he's been doing, since I understand he does nothing as far as Suttle is concerned.

BY MR. BRADBERRY:

Q What was your relationship with Suttle?

A There was no relationship.

Q All right. Are you familiar with the bank that Suttle would deposit the documentary drafts in?

A I understand that it was United Virginia Bank - Citizens and Marine, in Newport News.

Q What was your bank's relationship with United Virginia Bank - C & M, as to that documentary draft?

A There wasn't any relationship.

Q Talking about the one, now, from Maceo Jones you have in your hand?

A Yes, sir.

Q And it would be the same with any other drafts which came from Suttle Motor Corporation and went to United Virginia Bank - C & M?

A Yes, sir.

Q So the only one you had a relationship with was United Virginia Bank - State Planters, in Richmond?

A Yes, sir.

Q Was that the source of the draft from Suttle?

A Yes, sir.

MR. BRADBERRY: Let the record reflect the draft has been returned to Mr. Kostel.

BY MR. BRADBERRY:

Q In your bank, what means did you have for determining whether a car financed by a dealer was the same car on which a draft for payment was in the bank?

A I had no means of determining that.

Q Why?

A I relied solely on Batts & Hockaday Motors to furnish the bank with a title on any contract, on any sales contract that we bought from them.

Q When you were furnished a sales contract from Batts & Hockaday Motors, was it with recourse or without recourse?

A With recourse.

Q I show you Citizens Bank Exhibits 1 and 2 and ask you whether or not that transaction represented a purchase by you of a loan made by Batts & Hockaday?

A Yes, sir. It does.

MR. BRADBERRY: That's all.

BY MR. KOSTEL:

Q Mr. Forrest, how much experience have you had as a banker, in financing the sale of automobiles on behalf of used car dealers?

A Approximately three years.

Q Would you say that during that three years you have had considerable experience in the financing of automobiles?

A Depending on what would be "considerable."

Q Well, do you regard yourself as an experienced banker in financing automobiles?

A I consider myself as still having a lot to learn, yes, sir.

Q This Pontiac Mr. Jones purchased, you had a prearranged agreement with Mr. Sweeney at Batts & Hockaday Motors to generally finance his sales, didn't you?

A Citizens Bank of Poquoson had such an agreement, yes, sir.

Q And in the financing of automobiles, what is the procedure that a banker would normally follow with respect to ascertaining whether or not there are any prior liens on the vehicle?

A Would you please repeat your question, Mr. Kostel?

(The pending question was read by the

court reporter.)

A If a customer entered the bank and made application to finance an automobile?

BY MR. KOSTEL:

Q No. Let's confine it to a procedure where a dealer is bringing you --

A Then we would rely on the dealer to furnish us with a clear title showing our lien.

Q Showing your lien; is that right?

A Yes, sir.

Q And then you would, if there were a lien on the title or if there were a reservation of the title, then you would pay what's necessary to clear the lien and then give the dealer the balance of the proceeds, wouldn't you?

A If I knew that there was a prior lien against this particular title, I would, yes, sir.

Q And when you purchased this deed of trust, you were not only relying on the dealer having endorsed it, but you were also relying, as security for your loan, on the value of that automobile, weren't you?

A Yes, sir.

Q So if there were a prior lien on the automobile that the dealer had not informed you about, that would diminish the value of your security, wouldn't it?

A Want to repeat the question?

Q If there were a prior lien on the automobile that you financed for the dealer, that the dealer had failed to inform you about, that, of course, would diminish the value of your security, wouldn't it?

A Certainly.

Q And you chose to rely entirely on what Mr. Sweeney told you about the status of the title of these automobiles you were financing for him?

A Yes, sir.

Q Approximately how many did you finance for him over that period, say, in the late summer and fall of 1972?

A I don't have any idea.

Q Was it a substantial number?

A What would you term "substantial"?

Q Fifty?

A Yes, sir.

Q At least fifty, wasn't it?

A Yes, sir.

Q Now, isn't it true, Mr. Forrest, before you financed this '72 Pontiac that Mr. Jones purchased, you had had some trouble with the Batts & Hockaday account, in that it had been overdrawn on at least several occasions?

A I can't state that I was aware that we

were having problems.

Q Well, does the bank record indicate to you the account had been overdrawn?

A I'd have to examine the bank record.

Q Would you, please, sir?

A I don't have it.

MR. BRADBERRY: What records are you talking about?

MR. KOSTEL: The Batts & Hockaday account.

MR. BRADBERRY: All right, Mr. Kostel, would you specify the period we're talking about?

THE COURT: He said the summer of --

MR. KOSTEL: Late summer through the fall of '72. If Your Honor please, I'm spilling over into the other case now. I think it's probably in the interest of time to do that, if it's all right with the Court and counsel -- let it all hang out.

MR. BRADBERRY: If Mr. Forrest is going to be questioned on this, which I have no objection to, may he come down, get the records he needs, because they are voluminous?

THE COURT: Yes.

MR. KOSTEL: From September to December.

THE COURT: All I think he would need would be three ledger cards.

MR. BRADBERRY: Yes, sir, but they are voluminous.

THE COURT: All right. He can step down. Did you say from September?

MR. KOSTEL: Late August.

BY THE COURT:

Q All right, Mr. Forrest, I believe the question was, if Batts & Hockaday had any banking problems, to-wit, overdrafts, from late summer up to November 1972?

A Excuse me, Your Honor.

Q All right.

A According to the bank records that I have got in front of me now, I can see by these only two occasions that Batts & Hockaday Motors, from September through December, have an overdrawn balance.

BY MR. KOSTEL:

Q What were those dates, sir?

A September 11, '72, December 19, 1972.

Q All right, sir. During the same period of time, didn't your bank receive documentary drafts made by Batts & Hockaday Motors, Inc. which were of an amount

that would exceed the amount that they had in their account and, therefore, could not be immediately honored?

A Mr. Kostel, if I may --

Q Yes, sir.

A You seem to be suggesting that upon receipt of the drafts, if the money was in the account, that we could pay the draft?

Q No. I'm not suggesting that.

A Well, if you are not, then there's a possibility that, in fact, we could have received drafts and at some time there wasn't enough money in there to cover them.

Q Would you say that happened frequently during that period of time?

A I couldn't say that without --

THE COURT: Are you talking about documentary drafts?

MR. KOSTEL: Yes, sir. Documentary drafts.

A Yes, sir.

BY MR. KOSTEL:

Q In other words, he only had one overdraft before the unit to Maceo Jones was financed,

according to your testimony, September 11, but as I understand it, you will agree that quite often you received documentary drafts drawn by Batts & Hockaday which were of an amount that if they were honored, would also overdraw the account; isn't that so?

A But the drafts, the documentary drafts, Mr. Kostel, were not drawn against Batts & Hockaday Motors' checking account.

Q Well, let me ask you this, Mr. Forrest: On the documentary drafts that you received during that period of time, the ones that were paid were either paid by check that Batts & Hockaday gave you or by debiting that account; isn't that right?

A Yes, sir.

Q And which way were they paid more frequently, by a separate check of Batts & Hockaday or by debiting that account?

A I don't know the answer to that, sir.

Q Didn't the fact that they had an overdraft and didn't the fact that you had drafts, documentary drafts in your possession that if it was necessary to debit the account to pay it, it would overdraw the account, bother you from the standpoint that the dealer that you were relying on was not reliable financially?

A No, sir. I had no reason to believe Batts & Hockaday Motors had any problem until the latter part of December.

Q Weren't they doing a lot of borrowing from your bank?

A Yes, sir. But that's one of the reasons our doors are open.

Q I think you said, in response to a question Mr. Bradberry asked you, you had no way of knowing if you had a unit inside, a title to a unit inside a documentary draft in your bank at the time you financed such a unit, after it was sold by Batts & Hockaday?

A Yes, sir.

Q Wouldn't the face of a documentary draft describe to you and in some instances have the serial number on it?

A They could have, yes, sir.

Q Is that the documentary draft you received on the Maceo Jones unit?

A It's on a 1972 Pontiac.

Q Is the serial number on it?

A Yes, sir.

Q You received that on November 30, 1972?

A Yes, sir.

Q So at least from November 30, 1972, your bank had knowledge or should have had knowledge that Batts & Hockaday didn't own a unit that it had sold and you had financed?

A We had no reason, Mr. Kostel, to raise any suspicions that we were financing an automobile that we were, in fact, holding the draft on and, therefore, there was no comparison of the drafts versus the sales contracts made. There was no reason for the comparison of the drafts and the sales contracts.

Q You mean it did not worry you at all, then, from a banker's standpoint, number one, that there might be a prior lien on the cars that Batts & Hockaday sold or, number two, title might be reserved until the documentary draft had been honored?

A In all of our dealings, all of my dealings with Batts & Hockaday Motors, I had no reason to suspicion any wrongdoing.

Q Well, from the standpoint of good banking habits, whether or not you suspect anything is wrong with the customer or not, isn't it normal, in the financing of an automobile, that you pay off the prior lien or determine whether or not the title has been reserved by the seller pending payment of the draft? Isn't

that just good banking practice, whether or not you have any suspicions about your customer?

A If we were not or had not been relying on Batts & Hockaday Motors to furnish us with a title, then most certainly I would have checked this out, had I, myself, made the loan and been relying on the title as security.

Q All right, sir. I think the testimony is that your bank received that draft on November 30 from UVB - State Planters, in Richmond?

A Yes, sir.

MR. BRADBERRY: Wonder if we could have that draft introduced?

MR. KOSTEL: Yes, sir. I will. I'd love to go ahead. Please let me.

BY MR. KOSTEL:

Q What did you do with that draft after you received it on November 30, 1972?

A We notified someone from Batts & Hockaday Motors we had it and we held it at the bank until such time as they would authorize us to pay it.

Q Suppose they didn't authorize you to pay it?

A They would either have to authorize me to pay it or tell me to return it.

Q Suppose they didn't tell you either one?

A Then I would hold the draft.

Q Suppose -- as I understand the testimony given in the previous hearing, the Batts & Hockaday account got in very serious trouble in the latter part of December; is that right?

A Yes, sir.

Q And because of that, you returned all unpaid documentary drafts to the banks that you had received them from; is that right?

A All relations had been severed with Batts & Hockaday Motors; therefore, there was no possibility of collecting those drafts.

Q That's not what I asked you. Did you return the drafts?

A We did return the drafts.

Q In the latter part of December?

A Thereabouts, yes.

Q You have no records which would indicate exactly when in the latter part of December you returned those drafts; is that right?

A Yes, sir.

Q Let me ask you this: Suppose a representative of Batts & Hockaday had neither authorized you to pay the draft or return it -- and I assume when you say "return it," you mean dishonor it; is that right?

A Yes, sir.

Q And the account had not gotten into financial trouble, how long would you keep the draft?

A Until someone from Batts & Hockaday Motors authorized me to pay it.

Q Or dishonor it?

A Yes, sir.

Q Even if that be a month, two months, six months or a year; is that right?

A Possibly, yes, sir.

Q And you felt there was no duty owed by your bank to the forwarding bank to notify them that the item was still uncollected but still in your possession?

A Sir?

Q You felt that there was no duty on your bank to notify the forwarding bank of those documentary drafts that the draft was uncollected but still in your possession?

A That's right, sir.

Q All right. And this is the other draft

that's in dispute in this matter, I believe, isn't it? Can you identify that?

MR. KOSTEL: This will be Suttle No. 1.

(Documentary draft dated 11-14-72, payable to the order of Suttle Motor Corporation, in the amount of $4,000, was received in evidence as Plaintiff Suttle Exhibit No. 1.)

A I believe it to be, yes, sir.

BY MR. KOSTEL:

Q I think your record would indicate you received that draft in your bank on October 30th; is that right?

A Yes, sir.

MR. KOSTEL: I offer that as Suttle No. 2, if Your Honor please.

THE COURT: All right.

(Documentary draft dated 10-18-72, payable to the order of Suttle Motor Corporation, in the amount of $6,800, was received in evidence as Plaintiff Suttle Exhibit No. 2.)

BY MR. KOSTEL:

Q Both drafts were returned to United Virginia Bank - State Planters, in Richmond, Virginia in the latter part of December 1972; is that right?

A Yes, sir. I believe that to be the truth.

Q And isn't it a fact that on that second documentary draft, which contained the title to a 1972 Cadillac, you also financed the sale of that Cadillac for Batts & Hockaday, to a Mr. Harrell, I believe?

MR. COGDILL: Harold.

BY MR. KOSTEL:

Q Harold. Isn't that true?

A I believe so, yes, sir.

Q And that occurred on December -- this deposit slip isn't very clear -- on December 20, 1972, the proceeds of the financing of that '72 Cadillac were credited to Batts & Hockaday's account in the amount of $6,350?

A What was the day of the deposit, again?

Q I think it's the 20th of December, 1972.

MR. BRADBERRY: It's the 20th of December, $6,350.

A The deposit is for $6,350.

BY MR. KOSTEL:

Q Isn't that the deposit slip? The date isn't clear.

A Yes, sir.

Q But even though the date is not clear on the deposit slip, the ledger reflects the 20th of December, 1972; is that right?

A The day of the month doesn't appear on this photostatic copy.

Q It does on mine, sir. It does on Mr. Bradberry's.

MR. KOSTEL: I think we can stipulate it.

THE COURT: Is that $6,350?

MR. KOSTEL: Can we stipulate that, Mr. Bradberry?

THE WITNESS: It says "December," no date.

MR. BRADBERRY: It was December 20th, Your Honor.

(The deposit slip for the amount of $6,350 was received in evidence as Plaintiff Suttle's Exhibit No. 3.)

BY MR. KOSTEL:

Q All right. Had you had any overdrafts

in the Batts & Hockaday account other than the ones you have related to me, up until December 20, 1972?

A No, sir.

Q Had an overdraft of $57.90 on the 15th, didn't you?

A Yes, sir.

Q I thought you told me they didn't have any except the ones you related to me?

MR. BRADBERRY: He said the overdrafts were in September and December 19.

BY MR. KOSTEL:

Q Oh. Is that the other date you gave?

THE COURT: Yes, sir.

BY MR. KOSTEL:

Q I also see one December 15, 1972 of $13.90; is that true?

A Yes, sir.

THE COURT: All right, gentlemen, I'm going to take a short recess.

(Brief recess)

BY MR. KOSTEL:

Q Mr. Forrest, according to those ledger sheets that you have in front of you -- where is the November 15 ledger card? Copy shows a notation I don't find on the original, Mr. Forrest. That's why I am taking so much time. You see this copy? I don't vouch for what's on here, but -- "DM" written on this copy, in handwriting, that I don't see on the original ledger sheet. Is there a "DM" supposed to be on this original?

MR. BRADBERRY: Let me see that, Mr. Kostel. All right. Is it on the original?

THE WITNESS: No, sir.

BY MR. KOSTEL:

Q You know what that is, don't you? Just because it's not on the original --

A No, sir.

Q You don't?

A No, sir.

MR. BRADBERRY: Not on the original, Your Honor. If Mr. Kostel wants to qualify that copy, that's fine. It's not our copy.

BY MR. KOSTEL:

Q Was the account of Batts & Hockaday

ever debited other than to pay a documentary draft? Was it debited to pay any indebtedness Batts & Hockaday may have owed your bank?

A Yes, sir.

Q Where is that reflected on your ledger sheet?

A It isn't.

Q Why isn't it?

A No reason to reflect it on the sheet.

Q Therefore, was it debited on November 15, 1972?

A I don't know.

Q Do you have any record that would so indicate?

A No, sir.

Q Well, who would?

A The bank, I would imagine.

Q Well, if Mr. Sweeney were to testify that on November 15, 1972, it was debited for about $45,000, would that be reasonably accurate as to amount and approximate date?

A Without examining the bank's record, I couldn't answer that, Mr. Kostel.

Q Well, that's the bank record, isn't it, Mr. Forrest?

Q It was more than a dollar?

A I would imagine.

Q Do you know whether it was more than a dollar?

A No, sir.

MR. COGDILL: The thing that he was talking about wasn't forty-five hundred, Judge. You said --

THE COURT: I thought he said forty-five thousand.

MR. COGDILL: That's right. You asked him "forty-five hundred."

THE COURT: Well, I might have said "forty-five hundred." I'm sorry.

BY MR. KOSTEL:

Q Who ordered these debits?

A What debits are you referring to?

Q The debits that were made against the account, to pay indebtedness of Batts & Hockaday to your bank.

A Someone from Batts & Hockaday Motors.

Q In other words, they weren't done on the initiative of the bank?

A Not without notifying someone from Batts

& Hockaday Motors, no, sir.

Q That's not what I asked you. On whose initiative were these debits made?

A I'm sorry. I don't know how to answer your question other than the way I put it to you.

Q What were they made for?

A Various loans.

Q Such as? Mr. Forrest, I'm going to get to the answers and --

A Well, if I knew what answer you were trying to get to, I could possibly answer it.

Q You don't know what they were made for?

A Various and sundry things.

Q Name some.

A To pay off loans.

Q Loans that had gone bad?

A No, sir.

Q Loans that Batts & Hockaday made through your bank?

A On occasion, there was a debit made against Batts & Hockaday Motors to pay delinquent accounts.

Q To pay delinquent accounts on units that were financed through you, that they endorsed to you with recourse?

A Yes, sir.

Q And for what other reasons?

A To pay notes, demand notes.

Q Demand notes that Batts & Hockaday signed when they were borrowing money from your bank?

A Yes, sir.

Q Was it because these notes were past due that the debits were made on the account?

A Not necessarily, no, sir.

Q Was it ever made against the account because the notes were past due?

A None that I, personally, can recall, no, sir. I was not the party of any debit or any debiting of the Batts & Hockaday Motors account to pay off a delinquent loan.

Q Sir?

A I was never a party of any debit against Batts & Hockaday Motors to pay off a delinquent loan.

Q To your knowledge, was anybody at the bank a party to a debit of that account to pay off a delinquent note at the bank?

A Not to my knowledge.

Q You have no knowledge of that?

A No, sir.

Q Does Mr. Riggins?

A I don't know, sir.

Q You had no dealings with -- and I mean by "dealings" any conversations or correspondence or any communication whatsoever with Suttle Motor Corporation about these documentary drafts, did you?

A None that I can recall.

Q And you had none with United Virginia Bank - Citizens and Marine, did you?

A None that I can recall.

Q And the only contact you had with United Virginia Bank - State Planters about these drafts would have been when you received them from them and then when you sent them back; is that right?

A Yes, sir.

Q Who did you give notice of dishonor to?

A United Virginia Bank - State Planters.

Q In what form was that notice?

A The drafts were returned, noting that business had been discontinued with Batts & Hockaday Motors; therefore, there was no possibility of us collecting them.

Q Where is that? Do you have a copy of that notice?

A No, sir.

Q Did you have many discussions with Mr. Sweeney or Mr. Whitehead about these two drafts which are

in issue in this litigation, as they would come in the bank from time to time?

A Yes, sir.

Q What was the nature of those discussions?

A Whenever someone from Batts & Hockaday Motors would come into the bank, I would go over all the drafts we had in the bank to let them know what we were holding and to ascertain whether or not they wanted to pay them or not.

Q And how often would you go over them?

A Every so often. Whenever someone from Batts & Hockaday Motors would come into the bank.

Q And between October 30, when you received the first one, and when your business relationship with Batts & Hockaday terminated, about how many times would you say either Mr. Sweeney or Mr. Whitehead or someone from Batts & Hockaday would come in the bank and you would discuss these?

A At least twice a week.

Q Twice a week? Didn't it occur to you, then, that -- sometime after you financed the car to Maceo Jones and you reviewed these drafts from Batts & Hockaday, didn't it occur to you that they had sold the

car, that the title was in this envelope that's been introduced as evidence, and the serial number and the model were on the face of the envelope?

A No, sir.

Q You didn't even know that?

A No, sir.

Q Nor did you know that you financed for Mr. Harrell a '72 Cadillac convertible that the title of which was in this draft which you received on October 30?

A No, sir.

Q But you had actual knowledge of these drafts, did you not?

A Of the drafts, yes, sir.

THE COURT: May I interpose here?

BY THE COURT:

Q What did they tell you about these two drafts -- not to honor them?

A No, sir. They never told me not to honor them.

Q What did they tell you about them?

A That they would pick them up or pay for them.

Q Well, isn't that the same thing as

honoring them? Isn't that the way they honor them, they either debited their account or gave you a check for them?

A They said they would pick them up, Your Honor, but never did they give me a debit or check against their account.

Q I understand that. But they just kept telling you they would pick them up?

A Yes, sir.

Q Never did they pay them or tell you to debit their account?

A No, sir.

Q Did they ever tell you that they had sold you the paper in both of these cases?

A Not that I can recall, Your Honor.

Q Well, had they told you that, would it have made any difference?

A It should have -- if they had told me this, it should have raised some suspicion, yes, sir.

Q Suspicion of what?

A That if, in fact, we were holding a draft that was involved in an installment loan contract, that the title with that draft was involved in an installment contract.

Q And what would you have done then, had

you known that?

A I would have told --

Q Suppose Mr. Sweeney or Mr. Whitehead came in and told you this Suttle Motor Company draft for $4,000, that you all had financed this Pontiac for Maceo Jones and had deposited the money to their account in the amount of $4,100, what would you have done then?

A I would have ascertained either from someone from Batts & Hockaday Motors or my office just what I should do. I would have sought advice.

Q And when you are saying they told you they would pick them up, that meant they were not going to dishonor them, but would pay them in one means or another?

A Yes, sir.

THE COURT: All right.

BY MR. KOSTEL:

Q Did you ever say to Mr. Sweeney, "Look here, you've got to tell me one way or the other about these drafts, you've got to pay them or either return them as dishonored"?

A I never made a demand on anyone from Batts & Hockaday, no, sir.

Q Did you ever threaten to return them

unless he made a decision, return them dishonored?

A Not that I can recall.

Q Suppose he had told you to pay the draft on the '72 Cadillac, which I think is Suttle Exhibit No. 2, on October 30, and debit his account; you wouldn't have had the money to do it, would you?

A If he had given it to me, yes, sir.

Q I mean, if he asked you to debit his account?

A Well, he, Mr. Sweeney or someone from Batts & Hockaday Motors would have known there wasn't the money in the account and I don't know why they would tell me to do something when they knew it couldn't be done.

Q You have what I call a "composition book" there in front of you?

A No, sir.

MR. BRADBERRY: Right there.

BY MR. KOSTEL:

Q It's a composition book with red ink on it, written "Customer Drafts." You are familiar with this book, aren't you?

A Yes, sir.

Q What is this book?

A That's a book, beginning early August, I began to log the documentary drafts in that I was receiving in regards to Batts & Hockaday Motors.

Q You began then?

A Yes, sir.

Q Did you receive any in regard to Batts & Hockaday Motors prior to that time, which are not logged?

A I believe so.

Q For approximately how long a period, if you know?

A I can't say, Mr. Kostel. I'm sorry.

Q But they were all prior to August 7, 1972; is that right?

A Yes, sir.

Q And this book indicates when the drafts were received and the amounts, who they're from and the date they were paid or the date they were returned, except some do not indicate the date they were returned, they show "Return," but do not indicate the date?

A Yes, sir.

Q Do you know or is there any record that you might have which would indicate why the returned drafts were returned?

A No, sir.

Q Do you have any recollection as to these individual drafts, other than the ones in question, in this book, as to why some of them were returned? What I am getting at, Mr. Forrest, is, look through here and tell me which were returned because Mr. Sweeney or someone at Batts & Hockaday told you to return them and which were returned because of this termination of your relationship with Batts & Hockaday and the fact that you couldn't collect them.

A I couldn't do that, sir, because the records don't tell me anything and I don't recall which ones were returned for which reasons.

Q Do you recall testifying -- to save a little time -- I don't know whether it was you or Mr. Riggins -- thirty-eight documentary drafts paid on this account which were received after you received the one on October 30, 1972, payable to Suttle Motor Corporation?

A You are asking me if I am aware of that?

Q Yes.

A The records, if they reflect that, yes, sir.

Q See if that record reflects that.

A Of course, as I said before, my records do not reflect when I returned the drafts, so, therefore, I

can't tell.

Q Your records reflect the ones that were paid after you received the Suttle Motor Company draft on October 30?

A Yes, sir.

Q Would you tell us how many were paid after you received that draft? I'm talking about ones which were received after you received that draft, and paid.

A And paid it? Thirty-eight.

THE COURT: That is, after the November 30th?

BY MR. KOSTEL:

Q All right. How about after the November 30th?

MR. BRADBERRY: Did you say after November 30 or October 30?

MR. KOSTEL: Thirty-eight after October 30. Now, I am asking about November 30.

MR. BRADBERRY: But thirty-eight after October 30?

THE WITNESS: Yes, sir.

BY MR. KOSTEL:

Q Now, I am asking, how many were received and paid after you received, on November 30, the draft payable to Suttle Motors?

A One.

Q Which one would that be, sir?

A (No response)

Q Why did you indicate in this book the date some of these drafts were returned and you didn't indicate in this book the date others were returned?

A I don't know, sir.

Q This record was kept by you, wasn't it?

A Yes, sir.

Q You didn't want to conceal the fact that you waited a long time before you apparently returned them, did you?

A No, sir.

MR. KOSTEL: I would like to offer this in evidence. If you've got a copy, I would like --

MR. BRADBERRY: I don't have copies. I ask we be allowed to copy and withdraw the original.

MR. KOSTEL: All right. I want the Court

to peruse that.

THE COURT: All right. Suttle Motor Exhibit No. -- what is it? No. 4?

(Record book of documentary drafts of Batts & Hockaday Motors, Inc. was received in evidence as Plaintiff Suttle Exhibit No. 4.)

BY MR. KOSTEL:

Q Your attorney subpoenaed some records from United Virginia Bank - State Planters and it was returned to the Court. Are you familiar with these? I guess you call them "collection advices."

A I've never seen this. These look alike. I mean I can see by them there's a $4,000 advice -- this was probably attached to the documentary draft -- and, also, on this advice, I see a $6,800, which was probably attached to the draft.

Q Is that what you term a normal banking transmittal advice accompanying these drafts?

A It's one of the forms used, yes, sir.

Q Any special instructions on there, other than asking you to collect?

A That's all I see.

Q And I think your testimony is that you've

got a right to do nothing about that collection advice unless and until your customer, which, in this case, is Batts & Hockaday, Inc., tells you either to pay it, gives you the money to pay it, or tells you to return it dishonored?

A Yes, sir.

THE COURT: Is that what came with these drafts, this advice?

MR. KOSTEL: Yes, sir, these two.

BY MR. KOSTEL:

Q Could you tell me how much Batts & Hockaday was indebted to the Citizens Bank of Poquoson at the time the business relationship terminated between you and them?

A No, sir.

Q Do you have any idea?

A No, sir.

MR. KOSTEL: I think we can stipulate, if Your Honor please, Citizens Bank of Poquoson claim indebtedness against Batts & Hockaday, as of the time the relationship terminated in late December of 1972, of approximately $140,000.

THE COURT: Hundred and forty?

MR. KOSTEL: Yes, sir.

MR. BRADBERRY: Hundred and forty-two, five, if Your Honor wants to be absolutely on the money.

BY MR. KOSTEL:

Q You knew what the nature of the transaction was between Suttle Motor Corporation and Batts & Hockaday Motors, Inc., with respect to these two vehicles, didn't you?

A If you mean, Mr. Kostel, that I had knowledge of an automobile passed hands?

Q Yes. Well, let me rephrase it. You knew that Suttle Motor Corporation put the title to these two vehicles in the envelope and when they were paid, then the title would be delivered to Mr. Sweeney or somebody at Batts & Hockaday, didn't you, that that was the nature of this type of transaction?

A Through my experience, I knew that titles came in these envelopes. I had no knowledge that there were titles inside there or what titles were inside the envelopes.

Q Well, you knew there were titles inside these envelopes, didn't you?

A I had a pretty good idea.

Amounts I cannot recall.

Q Okay. Do you remember making a debit during that time limit or time period?

A I could have.

Q Okay. All right. What were they made for?

A I don't know, and without seeing the debits, I could not answer that.

Q Mr. Forrest, I want you to tell me who you talked to, specifically, about Suttle Exhibit No. 1, which is a documentary draft on the automobile of Maceo Jones, who you notified about this draft.

A Both Mr. Sweeney and Mr. Whitehead.

THE COURT: Sweeney and who?

THE WITNESS: Mr. Whitehead.

BY MR. COGDILL:

Q You notified both of them?

A Yes, sir.

Q Okay. And both of them told you they were going to pick it up?

A Yes, sir.

Q All right. Who did you notify on the other draft, involving the '72 Cadillac?

A Both.

Q Both of them? Okay. Now, is it the usual custom of the Citizens Bank of Poquoson that you will finance a deal without a title attached to the deal?

A Yes, sir.

Q And you never go back and check to find out whether the title comes in?

A No, sir.

Q Well, does your bank have any responsibility to the person that's paying you the money, where you finance, to see that person does have a title as required?

A I don't know the answer to that, sir.

Q Okay. But did you go back and see, when Mr. Jones stopped making his payments, whether or not you had a title at that time?

A No, sir, I didn't.

Q Let me ask you this: Have you ever discussed a time limit as to how long you were allowed to keep drafts, these documentary drafts that came in, between either Mr. Whitehead or Mr. Sweeney?

A No, sir.

Q No time limit, such as five days, has ever been instituted?

A No, sir.

Q Okay. Mr. Forrest, was the purpose that

you started keeping this book so that there would be no problem as to you knowing the date that the drafts would come in and when they were paid?

A I don't recall the purpose of initiating it.

Q You don't recall that?

A No, sir.

Q Do you recall whether or not you were advised by Mr. Riggins that you should start keeping a book, some type of book?

A Yes, sir, I believe I was.

Q And is that as a result of some problem that you had with Mr. Sweeney when some drafts were overlooked?

A I don't know, sir.

Q Now, your authorization that came from Batts & Hockaday, was that in the form of a telephone call, that you would receive authorization to debit the account, or did you require written --

A No, sir. It occasionally was verbal, over the telephone or in person.

Q Did you check the balance of the account at the time you received the permission over the telephone to debit the account?

A Before the debit would have been made, yes, sir.

Q Okay. There was only three times, I believe you testified, between September 11 or in that area and December 19 that this account was overdrawn?

A Yes, sir.

Q Okay. There was always funds in the bank rotating, were there not? There were always deals being brought to you?

A Most of the time, yes, sir.

Q Okay. Now, when you started keeping your documentary draft record, did you go back to that when you talked to Mr. Sweeney or Mr. Whitehead and see how long a draft had been kept in your bank?

A Occasionally.

Q Okay. And did you ask why certain drafts were being paid while --

A No, sir.

Q If a draft was being held, were you aware that a draft was being held?

A Yes, sir.

Q For some extended period of time, say, like the one from October 30? You were also aware that that car had probably been sold, were you not?

A No, sir.

Q Well, did you ask whether or not you had --

A No, sir.

Q You did not? As I understand your testimony, your testimony is that you do not specifically remember a conversation with Mr. Whitehead about these two specific drafts?

A I believe I stated that on several occasions, we had conversations about these two drafts.

Q Okay. Let's talk about some of those conversations. Was one of those conversations when the car was sold?

A I don't recall.

Q Okay. Was the other -- now, talking specifically about the Pontiac of Mr. Jones, you don't remember that, I believe you said?

A Yes, sir.

Q Do you remember any conversation about the deal of Harrell?

A No, sir.

Q And you do not remember a conversation or a meeting with Mr. Sweeney, yourself and maybe one other person in late December about these specific drafts?

A No, sir.

MR. COGDILL: That's all the questions I have.

BY MR. BRADBERRY:

Q Mr. Forrest, Mr. Kostel asked you about the draft --

MR. BRADBERRY: May I have the two drafts from Suttle, Your Honor?

BY MR. BRADBERRY:

Q Mr. Kostel asked you about Exhibit No. 1 for Plaintiff Suttle Motors, with regard to a serial number and identification of the Pontiac. That draft contains such identification, does it not?

A I wouldn't know. I never opened the envelope.

Q Does it contain a serial number on the face of the instrument?

A Yes, sir.

Q Without regard to the content?

A Yes, sir.

Q All right. Does Suttle Motors Exhibit No. 2 contain any similar identification of the vehicle on its face?

A No, sir.

Q Did you ever have occasion to receive a draft for another '72 Cadillac in the same amount?

A I wouldn't know without referring to the log.

Q Could you look at the log, please, and see? In the interest of saving time, I'll ask you to look in the month of November.

MR. KOSTEL: Show it to him. If it's in there, we'll accept it. Show him where it is.

MR. BRADBERRY: 10-30 and 10-6, October 6.

THE COURT: Didn't you ask him whether there was no notation on the Cadillac on the draft itself?

MR. BRADBERRY: Yes, sir, with regard to the identification, a serial number, etc.

THE COURT: Well, it's got "'72 Cadillac convertible" on there.

MR. BRADBERRY: Yes, sir, but it has nothing further on it.

THE COURT: What you meant was no serial number?

MR. BRADBERRY: Yes, sir.

BY MR. BRADBERRY:

Q If you look at October 6, do you have an entry for another '72 Cadillac convertible?

A I have an entry for a '72 Cadillac for $6,200.

Q On October 6?

A Yes, sir.

Q Now, Mr. Forrest, with regard --

MR. KOSTEL: Would also show that the record reflects that was paid on November 8, 1972?

MR. BRADBERRY: Yes. No objection as to that.

BY MR. BRADBERRY:

Q Mr. Forrest, what instructions did you receive from United Virginia Bank - State Planters regarding collection of those drafts -- if I may have them back?

A That they were for collection only.

Q What other instruction?

A No specific instructions.

Q Do they contain or reflect a time limit?

A No, sir.

Q In your position, can you state whether or not you had occasion to receive documentary drafts with instructions as to time limits for collection?

A Yes, sir.

Q What was the nature of the instructions you had occasion to receive on other drafts?

A Some drafts would allow three days for collection, ten days for collection, some would be drawn on sight.

Q Was it mandatory that a customer using documentary drafts to be paid at your bank, use that format?

A No, sir.

Q Could a forwarding customer have used a draft that contained instructions?

A Yes, sir.

Q Would you have honored these instructions?

A Yes, sir.

Q Was payment of either of those drafts ever specifically authorized by Mr. Sweeney, by Mr. Whitehead or by anyone with Batts & Hockaday?

A No, sir.

Q Now, you had knowledge of those drafts. Did you have any knowledge of the contents of those drafts?

A No, sir.

THE COURT: Let's don't rehash.

BY MR. BRADBERRY:

Q All right. Did you need a written authorization to debit Mr. Sweeney's account?

A No, sir.

Q When his account was debited, was Mr. Sweeney notified of a debit?

A Yes, sir.

Q How was he notified?

A In person, verbally, on the telephone.

Q Did your bank use debit slips?

A Yes, sir.

Q What happened to the debit slips? What was done with the debit slips?

A The original to the debit slip was used to debit the account, to be charged against the account, and the duplicate was given to someone from Batts & Hockaday Motors.

Q Did Mr. Sweeney ever complain to the bank that the bank was debiting his account without authority?

A No, sir.

Q Did you ever discuss a time limit or a five-day time limit?

A No, sir.

Q Did you ever apply such a time limit in dealing with any drafts that came to your bank?

A No, sir.

Q Can you state whether or not drafts were held beyond twenty-five days?

A On occasion, yes, sir.

Q Beyond thirty days?

A Yes, sir.

Q Beyond forty days?

A Yes, sir.

Q Were these drafts that originated with Suttle Motor Company?

A Yes, sir.

Q Was there ever a complaint from Suttle Motor Company?

A No, sir.

Q A complaint from United Virginia - C & M Bank?

A No, sir.

Q A complaint from State Planters?

A No, sir.

MR. BRADBERRY: No further questions.

BY MR. KOSTEL:

Q I want to go back over that, if I may. Mr. Bradberry asked you if you had had any drafts of Suttle Motor Corporation that you kept over thirty days, and you said, "Yes"?

A Yes, sir.

Q Is that reflected in here?

A I don't know, sir, if it is.

MR. BRADBERRY: Yes, sir, Mr. Kostel.

MR. KOSTEL: It is?

MR. BRADBERRY: Yes, sir. Would you like the dates?

MR. KOSTEL: Certainly would.

MR. BRADBERRY: If you will look at a draft received on October 6, the amount of $700, for a 1967 Pontiac?

MR. KOSTEL: Wait a minute.

MR. BRADBERRY: October 6, $700, not paid until November 8.

BY MR. KOSTEL:

Q How are they going to complain if it's

been paid? They wouldn't doubt it's been paid as long as it was paid, would they?

THE COURT: Let's ask him, not me.

MR. KOSTEL: That's who I am asking.

A Sir?

BY MR. KOSTEL:

Q How are they going to make a complaint if it's paid?

A They would not complain, I don't imagine, about the draft being paid. They may have complained about the time period it was being held.

Q They wouldn't know for how long a time period it was held, if it was paid, would they?

A Yes, sir. I believe they would.

Q How would they know it?

A Because they mailed the draft to us.

Q Their bank mailed the draft to you?

A This is what I am saying.

Q But their bank, using normal banking procedures, would have credited their account at the time they deposited the check in their bank account, wouldn't they?

A I don't imagine so, sir, if it was marked

for collection only.

Q Isn't it a conditional credit to an account, normally, in banking, when you deposit a check to an account, it's conditionally credited to your account and if it's returned by reason of dishonor, then the account is debited in that amount? Isn't that normal banking practice?

A One of those, yes, sir.

Q So if I told you that United Virginia Bank - Citizens and Marine gave Suttle Motor Corporation credit in its bank account the instant they deposited that check with United Virginia Bank - Citizens and Marine, then they wouldn't have any knowledge of how long it took to pay the draft, would they?

A Sir, this was a draft, not a check, drawn for collection only.

Q I understand that. But let's assume -- and there will be testimony to this effect -- United Virginia Bank - Citizens and Marine gave Suttle Motor Corporation credit for this $700 draft that you paid on November 8.

A I wasn't employed by United Virginia Bank - Citizens and Marine and I wouldn't have known.

Q You got complaints from United Virginia Bank or Suttle Motor Company on the drafts that were returned,

THE COURT: I overrule your motion.

MR. COGDILL: Note the exception.

THE COURT: At this time, you're going to proceed now?

MR. KOSTEL: Yes, sir. And Mr. Forrest was my first witness; in other words, I adopt what he said prior to the lunch break as part of my case in chief, if there is no objection.

THE COURT: All right.

MR. KOSTEL: What he said, as an adverse witness, and I would like to call Mr. Riggins as an adverse witness.

EVIDENCE ADDUCED IN BEHALF OF SUTTLE MOTOR CORPORATION

FREDERICK JAMES RIGGINS, called as an adverse witness by Plaintiff Suttle, after being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. KOSTEL:

Q State your name, address, age and occupation, please.

A Frederick James Riggins; 16 Phillips Road, Poquoson, Virginia; age thirty-six; banker.

Q And what title do you hold now?

A Senior Vice President.

Q Senior Vice President of what is now First Virginia Bank?

A First Virginia Bank of the Peninsula.

Q And that is a result of a merger with Virginia Bank of Poquoson?

A Citizens Bank of Poquoson.

Q Excuse me. In October 1972, it was still Citizens Bank of Poquoson?

A Yes, sir.

Q Were you the chief executive officer of the Citizens Bank of Poquoson at that time?

A Yes, sir.

Q As such, were you familiar with the checking account of Batts & Hockaday, Inc. or Batts & Hockaday Motors, Inc.?

A Yes, sir.

Q And who were the individuals that you dealt with mostly, for Batts & Hockaday, with Batts & Hockaday?

A Mr. Donald L. Sweeney and Mr. N. G. Whitehead.

Q You understood they were officers of that company; is that right?

A I'm sorry?

Q You understood they were officers of

Batts & Hockaday, didn't you?

A Yes, sir.

Q And you had a banking relationship with them that went back how far prior to October-November of '72?

A With Batts & Hockaday?

Q Yes, sir.

A December of '71.

Q Now, did the checking account get into trouble financially, from what you knew about it, say, during the latter part of 1972?

A Yes, sir.

Q All right. What was the first sign of trouble and what was it?

A It was a group of checks that had been deposited by Batts & Hockaday and those checks were returned for insufficient funds.

Q Those checks were returned, they were checks drawn on another bank?

A Yes, sir.

Q And had been returned by the drawee bank to Batts & Hockaday; is that right?

A That's correct.

Q And Batts & Hockaday deposited those checks in your bank and you gave them credit, is that right,

for those checks before they had cleared the drawee bank?

A That's correct.

Q And Batts & Hockaday drew on those funds before they actually were collected; is that right?

A That's correct.

Q And when did that occur, sir, approximately?

A It was, say, around the middle of December, around the 15th or so.

Q Did you have any trouble prior to that?

A No, sir.

Q Weren't there some overdrafts prior to that?

A Yes, sir. There had been some small overdrafts prior to that.

Q And weren't there some debits against the account prior to December 15, 1972 the bank had made to pay indebtedness of Batts & Hockaday to the bank?

A I'm sure there was, yes, sir.

Q Sure that there were?

A Yes, sir.

Q And what was the purpose of -- I asked you that. The purpose was to pay indebtedness to the bank. How did that indebtedness arise and why was it necessary to debit the checking account of Batts & Hockaday to pay it?

A Well, I don't know what, specifically, you are talking about. There were several different types of debits to the account for a multitude of reasons, I suppose.

Q No. I'm talking about only the debits made to satisfy any indebtedness to the bank. What type of indebtedness to the bank was there at the time the debits were made to the account?

A Well, I think you may be talking about automobile paper that more than --

Q That had gone bad?

A That was more than sixty days delinquent and under the terms of reserve contract, we charged it back to the account.

Q All right. Anything else?

A Debits against the account?

Q Yes, sir.

A There could be debits for drafts.

Q What type?

A Interest on loans and things like that.

Q They had some loans with you, didn't they?

A Yes, sir.

Q And were those loans delinquent when you made these debits against the account?

A No, sir. Renewal interest.

Q Well, isn't it true that at some point during the fall or early winter of 1972, you realized that Batts & Hockaday, Inc. was in serious financial difficulty?

A No, sir. In early fall of 1972?

Q Yes, sir.

A No, sir.

Q When, if ever, did it become apparent to you that they were in financial difficulty?

A I first became aware that they were having financial difficulties because of these returned checks, sometime around the middle of December.

Q What did you do about the indebtedness created by monies they had drawn on an account that had been credited with uncollected funds?

A You mean what steps did I take?

Q What did you do about it to protect the bank's position as much as possible?

A Well, I went to Mr. Sweeney, Batts & Hockaday, and confronted him with the situation and he said that he was reasonably certain that he could get the checks redeemed and that the party who had written them would make them good.

Q Did that happen?

A No, sir.

Q Did you take a note or anything from him to evidence the overdrawn amount at that time?

A At that time?

Q Yes, sir.

A No, sir.

Q At any later time, did you?

A Yes, sir. We attempted to get a note to cover the overdrafts and other debt.

Q Did you? Did you get a note to cover that?

A Yes, sir.

Q On or around December 15?

A Yes, sir.

Q Well, when?

A Well, it was December 21st or 22nd.

Q And the relationship still existed between your bank and Batts and Hockaday -- I mean deposit relationship on the 21st or 22nd, at the time you took that note; is that right?

A Yes, sir.

Q All right, sir. When did that deposit relationship terminate?

A We had notice from Mr. Sweeney somewhere around December the 28th or 29th or 30th or 31st, somewhere

in that time, to close the account.

Q Close the account?

A And forward him a statement or something.

Q Forward him a statement and close it?

A Yes, sir.

Q At the time you closed the account, how much money did he have in the account?

A I don't know.

Q Don't you have some records here that would indicate?

A Well, it was an overdraft. I don't know to what extent that overdraft was.

Q Didn't the overdraft result as a result of some debits that the bank made against that account to repay itself monies that Batts & Hockaday owed it?

A I don't -- I can't say that. I don't know.

Q You can't say that?

A I don't think that's the case.

Q The statement, copy of the statement, indicates on December 29, 1972, there was a debit of $41,825 for one item and a debit of $28,375 for another item?

A Yes, sir.

Q What's that for?

A They were for the returned checks.

Q Returned checks?

A Yes.

THE COURT: Forty-one thousand what?

MR. KOSTEL: Eight hundred twenty-five and $28,375.

MR. BRADBERRY: Your Honor, if I could at this point interpose an objection and ask Mr. Kostel to relate to the Court the relevancy of this testimony? Suttle Motors has sued us for two drafts totaling $10,800, which was received and run through bank channels before that time. We are charged with holding them for too long and sued only for that amount of money. I fail to see what relevance Citizens Bank's relationship with Batts & Hockaday and the fact that there was substantial debits against the account on the 29th of December would have with regard to the two drafts that Suttle Motors claims we held too long.

MR. KOSTEL: If Your Honor please, I will respond to that, if I may. I think it's relevant in that I'm trying to show that the

bank was in deep trouble with this account itself, and because of that, that was one reason why the Suttle drafts were not honored and probably would have been honored had the bank been going into that account and looking after themselves.

MR. BRADBERRY: Your Honor, the evidence is clear at this point that the reason that the two drafts were not honored was that the bank was never authorized to pay them.

THE COURT: Yes, sir. But he's got a right to overcome that if he can.

MR. BRADBERRY: All right, sir.

BY MR. KOSTEL:

Q Well, this is a credit, isn't it, Mr. -- I mean a debit? You're taking away from the account these two items, aren't you?

A Yes, sir.

Q So if you take away $41,825 and $28,375, which is approximately $70,000, isn't it, in round figures?

A About seventy-five.

Q Right. And then he made some deposits after that, didn't he?

A They were some deposits that had been

placed in the bank by Mr. Sweeney and we were trying to clear up the account to give him an itemized statement, but these two items here represent a number of returned checks.

Q I understand. So you ended up, at the termination of the relationship, with a $59,296.98 overdraft?

A That's correct.

Q If the debits, two debits I'm referring to on December 29, 1972, had not been made, were not necessary to be made, then he would have had a credit balance on January 3rd, 1973 -- and I am again dealing in round numbers -- of around $11,000; is that right?

A Ten or eleven.

Q So you improved your position by the debits of December 29, 1972 by $11,000; is that right?

A We charged the checks back to the account.

Q Right.

A They had been originally deposited to that account and we had to charge it back to the account.

Q And how much money did he owe you for other things, other than these checks that didn't clear, approximately, at that time?

A Direct obligations?

Q Yes, sir.

A Batts & Hockaday?

Q Yes, sir.

A $42,500.

THE COURT: You said $42,500?

THE WITNESS: Yes, sir.

THE COURT: Was owed to you by Batts & Hockaday when they stopped the account, closed the account?

THE WITNESS: Yes, sir.

BY MR. KOSTEL:

Q Plus the overdraft amount of $59,000?

A Plus the overdraft amount of $59,000.

Q Did you discuss with Mr. Forrest the documentary drafts that we have introduced? I think you are familiar with them. I'll call them Suttle's drafts for $6,800 and $4,000, I believe. Did you discuss those with Mr. Forrest after the bank received them; do you recall?

A No, sir, not that I recall.

Q There was no discussion, then, between you and Mr. Forrest about those between the time the bank

received them and they were returned?

A I instructed him to return them sometime shortly after Mr. Sweeney closed his account.

Q Well, when did it first come to your attention that your bank had them?

A That our bank had the drafts?

Q Yes, sir.

A I didn't know that they were specifically one motor company or one bank or whatever.

Q You knew you had a certain number of documentary drafts?

A I knew we had a certain number of drafts.

Q Lump sum amount, but not specifically?

A I probably didn't know the lump sum amount, because --

Q Did you know how long they had been at the bank prior to the time you instructed Mr. Forrest to return them?

A No, sir.

Q You didn't? Did you know at that time -- that would be between the time the documentary drafts were received and the time they were returned -- did you know what Mr. Forrest's policy was with respect to the payment or dishonor of them?

A I don't think the question of dishonor ever came up. I know what his instructions were with regard to payment of drafts.

Q What were they?

A As soon as he received the drafts he was to contact Batts & Hockaday or Mr. Sweeney or a representative of Batts & Hockaday and present the draft for payment and discuss with Mr. Sweeney when he wanted them processed, negotiated, whatever.

Q Suppose Mr. Sweeney never committed himself one way or the other, whether you ought to pay them or not pay them; what was Mr. Forrest's policy in that regard?

A Then he would just hold it.

Q And is it your understanding that he could hold them indefinitely as long as he didn't receive instructions from Batts & Hockaday either to pay them or return them?

A Yes, sir.

Q Are you familiar with the documentary draft concept?

A I am familiar with documentary drafts, so-called documentary drafts.

Q Is it your understanding that the title

is placed in an envelope and on the face of the envelope the draft is written?

A If you're talking about an automobile, yes, sir.

Q Yes, sir. And the reason the title is placed in the envelope is because the seller of the automobile doesn't want the buyer of the automobile to have title thereto until the draft is paid; isn't that right?

A Yes, sir. That would be fair.

Q No question about that, is there?

A No.

MR. KOSTEL: All right. Your witness.

CROSS EXAMINATION

BY MR. COGDILL:

Q Mr. Riggins, there was a plan that had been worked out between Mr. Sweeney and yourself and the bank around December 21st, whereby you had taken certain notes, which included not only the checks that you said were returned, the amount of direct liability that was owed by Batts & Hockaday, and personal loans of Sweeney to your bank, was there not?

A Well, yes, sir, it covered the overdrafts,

morning that he did not handle that transaction of $44,000, but your knowledge is that he did handle it on November 15, didn't he? Do you need me to refresh your memory?

A Yes, sir.

Q Okay. I'll refresh it. Do you remember talking to Mr. Sweeney and Mr. Whitehead and Mr. Sweeney advised you that he had not received the notice that was required by your dealer's agreement, of the sixty day notice?

A No, sir. That's not what he said.

Q What did he say?

A Well, he protested, he didn't want me to charge them back to the account, but he, in the end, was amenable to me doing it.

Q Okay. But he, at that time, Mr. Forrest was present with you and did it at your direction, didn't he?

A I'm almost certain he did. But at the same time, if you say he testified he didn't, I don't know. I could have signed them or -- I don't know.

Q But it was $44,000 that was taken out of the account?

A Yes, sir. They were done at my direction.

Q Okay. Now, let me ask you this, Mr. Riggins: Was it your instructions to Mr. Forrest that when documentary collection items were received, that those were to be -- whoever your customer was, you were to call that customer and notify them that that document had come in?

A To either call, or if a customer was coming in the bank regularly, like every day, when he came in the bank, to let him know that some of these drafts or collection items had come in.

Q And then you, at that time, wanted, Mr. Riggins, to determine from that customer, specifically, Batts & Hockaday, when that draft was going to be picked up?

A Well, we made them aware that the drafts were in the bank and told them they were ready for their inspection -- they have to inspect the contents of the envelope -- and at that time they would tell us if it was anything wrong, they would return them, and if not, they would ask us either to hold them or they would pick them up.

Q What about if they told you to hold them, what happened then? How long would you hold them?

A Indefinitely.

Q Forever?

A I've never considered the question of

eternity with this.

Q Well, I know that. But would you just keep them right on, would you never return them?

A Yes, sir. As long as the sending bank would allow us to keep them there and Mr. Sweeney didn't direct us to send them back, we would keep them.

Q Let's go back to these two --

A Only time we send them back is when a customer terminates his account or --

Q Let's go back to the two drafts. Do you remember a meeting at Holiday Inn on Mercury Boulevard, December 1972?

A No, sir.

Q You do not remember a meeting that was held with you, Mr. John Newman and a group from the bank in Fairfax County?

A Held with me?

Q Yes.

A In December of '72?

Q Uh-huh.

A No, sir.

Q Was Mr. Newman in this area in December of 1972?

A He came down on the -- first time I saw Mr. Newman with respect to the transaction that we did on

A Your Honor, I'm not exactly sure now what the amount was. It's been a --

THE COURT: Does anybody know?

MR. BRADBERRY: I'll tell you, Your Honor. Were two notes: one was $67,000; one note was for $75,000. The notes were broken down as follows: They aggregated $142,000. I can break that down if the Court would like.

THE COURT: No. I just want to know, I assume were two notes taken in --

MR. BRADBERRY: Yes, sir. Two notes. Total of $142,000.

BY THE COURT:

Q You took those notes from -- who signed the notes, Mr. Sweeney or Batts & Hockaday?

A Mr. Sweeney.

Q Personally?

A Personally, and Mrs. Sweeney. One was in the name of Batts & Hockaday with Mr. Sweeney and his wife endorsing, and the other one was, I believe, in the name of Mr. and Mrs. Sweeney personally.

Q All right. And what was that taken for? These notes were to cover what?

A To cover the overdraft of approximately $60,000, $36,000 note, $42,500 note and some other -- there may have been some other notes. I don't think there were.

Q All right. But not to cover these, these documentary drafts?

A No, sir.

Q Had nothing to do with that?

A No, sir.

Q Now, on December 29, you have testified that you debited the account of Batts & Hockaday in the amount of some $70,200. Now, what was that to cover?

A That was to cover -- that was charging back the checks. Your Honor, the following morning after we took the notes, we declined to negotiate the notes and so instructed Mr. Sweeney, I think very shortly after the bank opened.

Q So you didn't take the note, then?

A No, sir.

Q Is that what you are saying?

A Yes, sir. We never credited Mr. Sweeney's account, amount of the overdraft.

Q Did you give him back the notes?

A No, sir, not at that time.

Q Has it ever been given back?

A Yes, sir. On January 11, 1973.

that subsequently turned out to be bad?

A Yes, sir.

Q All right. The $42,000 note and the $36,000 note would have been extended. Right?

A Yes, sir.

Q All right. And you --

THE COURT: I really don't know why we're going into all this. Didn't negotiate the note, so looks like to me --

MR. BRADBERRY: If the Court is satisfied it doesn't have anything to do with these two drafts, I'll get off the subject. I've got other things to question him about.

THE COURT: I didn't say it didn't have anything to do with the drafts. I said the fact about having a note to take care of the overdrafts doesn't make much difference since they never negotiated the note.

MR. BRADBERRY: Well, it makes a difference to this extent: There were about $70,000 in checks. The new notes that were negotiated with the bank only included $63,500 with those bad checks. So even if the bank had honored its agreement and they had

wiped clean the slate for the overdrafts, etc., there would still have been an overdraft existing in the amount of $7,000, because the bank had not considered the full $70,000, which it subsequently had to write off. That was the only point I was trying to make.

THE COURT: All right.

BY MR. BRADBERRY:

Q Now, Mr. Riggins, have you seen the two drafts which have been identified as Suttle Exhibit 1 and Suttle No. 2, for $4,000 and for $6,800?

A Yes, sir.

Q What instructions do those drafts contain for collection?

THE COURT: Didn't we get that from the other man?

MR. KOSTEL: Don't they speak for themselves? Are you trying to say they don't contain any instructions? I don't mind stipulating whatever they say on there.

MR. BRADBERRY: Your Honor, I was going to go back through much of the same material Mr. Forrest testified.

THE COURT: I don't see any need doing that. Nobody has contradicted him.

MR. BRADBERRY: That's fine. Except I thought there was testimony from Mr. Forrest about that they did give him what they call an advice.

MR. KOSTEL: That's in the Court file, not on the documentary draft.

THE COURT: Yes, but didn't that accompany the documentary draft?

MR. BRADBERRY: Yes, sir, but -- there are a bunch of them.

BY MR. BRADBERRY:

Q In making the debits against Mr. Sweeney's account at the end of December, did your bank discriminate in any way against Mr. Suttle or Suttle Motor Company or anything that came from United Virginia Bank?

A Certainly not.

Q Was any decision made by the bank with regard to the nonpayment of the $4,000 draft and the $6,800 draft?

A I don't understand the question. Was any decision made by the bank?

Q Did your banking facility, through you

or through Mr. Forrest, have anything to do with the decision not to pay the $6,800 on one Suttle draft and $4,000 on the other draft?

A No, sir.

MR. BRADBERRY: That's all.

REDIRECT EXAMINATION

BY MR. KOSTEL:

Q Mr. Riggins, your bank was in the position of a collecting bank as far as these documentary drafts are concerned; is that your opinion?

A Yes, sir. The items were sent to us for collection.

Q Out of the Batts & Hockaday checking account or out of Batts & Hockaday through a separate check?

A They would have come in and --

MR. BRADBERRY: Your Honor, this is not in evidence.

MR. KOSTEL: What's not in evidence?

MR. BRADBERRY: The evidence is that the documents were sent to them, carried for collection, not that they were the agent for Batts & Hockaday and for your bank.

MR. KOSTEL: I didn't say that. I asked

task of mine.

Q Did Mr. Forrest? Is he charged with the responsibility of following the accounts?

A No, sir. He wasn't charged with the responsibility to go back and check on balances every day.

THE COURT: Well, isn't it true that December 6 he had $13,000, December 13 he had $37, and he's testified on December 15 is when he realized he was in trouble?

MR. KOSTEL: Yes, sir. What I am saying, from those balances and all those checks the Court will see in that composition book, just no way he could have collected those checks. I believe that's all.

RECROSS EXAMINATION

BY MR. BRADBERRY:

Q Mr. Riggins, isn't it also correct that those records reflect on November 17, $4,100 was deposited to the account, the proceeds of the sale of the car to Maceo Jones; and that on December 20th, $6,350 was deposited to the account, the proceeds of the sale of the Harrell vehicle, the Cadillac vehicle?

A Yes, sir. I think that's correct.

Q Now, isn't it also possible that Mr. Sweeney could have paid for the automobiles represented by those drafts with a check that he brought to the bank rather than as a debit to the account?

A Yes, sir. He could have just instructed us to have paid.

Q So the fact that he had a specific daily balance did not truly indicate whether or not he was capable of paying for the car, did it?

A No, sir, because --

Q For the draft?

A Right.

Q And you were unable to pay the draft until you were authorized to by Batts & Hockaday; is that not correct?

A That's correct.

Q Were you ever authorized to pay either of those drafts?

A No, sir.

THE COURT: How many times have I heard that today?

MR. BRADBERRY: That's all.

(Witness stood aside)

MR. KOSTEL: Mr. Whitehead, please.

N. G. WHITEHEAD, JR., called as an adverse witness by Plaintiff Suttle, after being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. KOSTEL:

Q Mr. Whitehead, state your name, address and occupation.

A N. G. Whitehead, Jr.; 619 Willow Drive, Newport News, Virginia; I sell cars.

Q How old did you say you were?

A Thirty-eight.

Q In October-November 1972, you were an officer in Batts & Hockaday Motors, Inc.?

A Yes, sir. Manager.

Q You didn't hold a corporate office?

A No, sir.

Q Were you authorized to sign checks?

A Yes, sir.

Q And you bought two units from Suttle Motor Company, that are in dispute today?

A Yes, sir.

Q You are familiar with them, aren't you,

the '72 Cadillac and '72 Pontiac?

A Yes, sir.

Q All right. Now, you sold those cars, didn't you? Who sold them? Did you sell them?

A No, sir. Bob Floyd sold one, I think, and Gibson sold one.

Q Now, you knew when the Bank of Poquoson received those drafts from Mr. Suttle's bank, didn't you?

A Yes.

Q In fact, Mr. Forrest told you he had them?

A Yes, sir.

Q What discussion did you have with him about paying, if any?

A When we sold the Cadillac, I figured -- he bought the contract on it, financed the car, I figured he'd take -- what we usually done, if I had a draft that had been in there over a five-day period, if I sold the car and he financed it, he'd just debit the account the amount of the draft and give title to it.

Q What was your understanding with Mr. Forrest about how the drafts would be handled, the documentary drafts?

A Well, the drafts, when they come in the

bank, they were kept in a book. He'd tell me what was in there.

Q What understanding did you have with them about paying them?

A I'd pay them as quick as I could, as fast as I could get them out.

Q Did you authorize him to pay these two drafts?

A I don't know if I should have authorized or not. I figured when he bought the contract, he'd pay for the car.

Q Had he done that on other documentary drafts when you sold a car?

A Yes, sir.

Q He would take out what it took to pay the draft off and put the balance in your account?

A He put the whole thing in the account and debited it out.

Q He'd put the whole thing in your account and take out what was necessary to pay the draft, then?

A Yes, sir.

Q And how many units would you say you had this happen, on documentary drafts, before we ran into these two?

A I wouldn't have no idea.

Q Would you say a lot?

A Yes, sir.

Q A lot of them?

A Yes, sir.

Q Was there any understanding between you as the representative of Batts & Hockaday, and anybody at the Citizens Bank of Poquoson that they would not pay those drafts unless you told them to pay them?

A No, sir.

MR. KOSTEL: Your witness.

CROSS EXAMINATION

BY MR. BRADBERRY:

Q Mr. Whitehead, did you tell the bank to pay the draft for $4,000 on Maceo Jones' car?

A I can't recall if I did.

Q Are you aware of the fact the car was sold and the contract purchased by the bank?

A Yes, sir.

Q Before the draft came to the bank?

A Ask me that again.

Q I show you Suttle's Exhibit No. 1, ask if you recognize it?

account was debited, you or Mr. Sweeney told Mr. Riggins or Mr. Forrest to debit the account, didn't you?

A I think some cases that we did not.

Q There are some cases where you did not?

A Right.

Q You mean that --

A Well, it's a lot of slips with no signatures on it. Usually if I told Dave to debit it and I was in the bank, I would sign it, authorize the debit slip.

Q That's an envelope, is it not?

A It is.

Q I am referring now to Suttle Exhibit No. 1.

A That's what it is.

Q When you would see those envelopes for the first time, they would be in Mr. Forrest's possession, generally, wouldn't they?

A Right.

Q Would they be sealed?

A Sealed.

Q Who would break the seal?

A I would.

Q What was the purpose of your breaking

the seal?

A To see if the title was in order, see if all the papers were in there that were supposed to be in there.

Q After you broke the seal to see if all the papers were in order was when you were able to make your decision whether or not to pay it?

A Right.

Q You did not expect to make a decision or pay for an automobile until you had a chance to look at the papers, did you?

A On a lot of occasions, I never opened the drafts. I could look at it and tell.

Q My question was, you did not expect to pay for an automobile until you had an opportunity to look at the papers?

A Yes, the opportunity --

Q Pardon?

A Yes.

Q My question is correct, you expected to have the opportunity?

A Right.

Q Did you ever make any complaint to the bank where they debited your account before you had the

MR. BRADBERRY: Your Honor, we would renew our objection.

THE COURT: Not unless he knows Forrest was there and heard it.

BY THE COURT:

Q Was Forrest in on the conversation?

A I don't remember that far back.

Q Let me ask you another question while I'm at it. You knew in December that these drafts weren't paid?

A Yes, sir.

Q Why didn't you tell Forrest to pay them then?

A I can't answer that, because I don't know.

MR. COGDILL: That's exactly what I'm trying to get to.

THE COURT: Well, you're trying to get it through something Mr. Newman said. I don't know about Mr. Newman. He's not a member of the organization now. I don't believe I can hold that that takes care of the hearsay rule, because he was a member back in that time. You could summons Mr. Newman.

MR. COGDILL: Is the Court holding, then, we cannot go into it?

THE COURT: Not what Newman said.

MR. COGDILL: I'm not going into what Newman said. I'm going into what Sweeney told Newman, in Forrest's presence, to do with these two drafts.

MR. BRADBERRY: I think that can be put in through Mr. Sweeney, Your Honor. He's present, can testify. Mr. Whitehead certainly doesn't have to testify what Don Sweeney did.

THE COURT: Yes. You can get that from him. If you want to corroborate it through this man, I'll let you put him back on to corroborate it.

MR. COGDILL: All right, sir. I'm not asking any more.

THE COURT: Let me follow up, then.

BY THE COURT:

Q You said you knew the drafts hadn't been paid as late as December of '72, and you didn't tell Mr. Forrest to pay them. Did you hear Mr. Sweeney tell Mr. Forrest to pay them?

A I can't say that I did, because, like I

say, it's been a long time.

Q And you all were in financial trouble December '72, weren't you? That's what the meeting was about?

A Yes, sir. That was the whole thing.

Q And you also knew at that time that the car of Maceo Jones had been financed through the Bank of Poquoson?

A Yes, sir.

Q But you didn't complain then or at any time, you, personally?

A Well, I told them we had to get the title out.

Q I understand that. But you didn't complain about the fact the draft had not been paid and the account had been credited with the money from the signing of the note, the buying of the paper?

A I figured when he bought the contract, that he'd debit it back out to the account.

Q But you knew in December he hadn't done that, though?

A Yes, sir. I knew that. He had debited some other things. He didn't leave enough money in there to debit it out.

MR. KOSTEL: What is the answer?

THE COURT: He said he debited some other things out.

BY MR. KOSTEL:

Q And there wasn't enough money left to debit that out; is that what you said?

A Yes, sir.

BY THE COURT:

Q Now, you also say that on some occasions, that the bank had paid these drafts without any authority whatsoever from you all and without anybody looking at the title?

A Yes, I think so, on occasion.

Q Well, can you give me an occasion?

A No, sir, not a particular car.

Q Why would you all look at some of them and not others?

A Well, I just figured the title and draft was in there and if it was a local draft, if they sent the wrong title or papers weren't fixed right, I could go to the dealership and get it corrected.

Q Well, did you look at any local drafts?

A Very seldom.

Q So now you're saying very seldom did you open these envelopes, unless it was an out of state or out

of town dealership?

A I didn't have any reason.

Q What?

A I knew that the title was in there.

Q Well, then, was it your understanding that as soon as they got those things, they were to pay them?

A No, sir. You got about five days, I think, was my understanding that you can hold a draft.

Q Who gave you that understanding?

A Well, that's what I have always heard that you could hold a draft.

Q Well, you knew they were holding drafts longer than five days, didn't you?

A Yes.

THE COURT: All right.

BY MR. FOX:

Q This car -- first of all, I represent only Maceo Jones, not connected with these distinguished banks, everything. But the car of Maceo Jones, you knew it was financed through the Bank of Poquoson, the bank we are talking about, the Citizens Bank of Poquoson?

A Yes, sir.

Q Citizens Bank of Poquoson knew it was

financed there, didn't it?

A Yes, sir.

Q Didn't you all have discussions about the fact that that draft was in the bank and that they had financed it?

A Yes, sir.

Q And there wasn't any question, everybody knew, the bank and you, that -- the bank and Batts & Hockaday, all knew that they had financed the car and that no title had ever been, in fact, turned over to the bank, because the draft hadn't been paid?

A Yes, sir.

Q But nobody did a thing about it at that time, as far as Maceo Jones is concerned, did they?

A We tried to.

Q The bank did?

A Batts & Hockaday did.

Q But there wasn't any question in your mind that the Bank of Poquoson knew it was the same car involved in the transaction whereby they had loaned the money, supposedly, to Maceo Jones, but actually had credited your account and there was a documentary draft awaiting on the same car?

A Yes, sir.

MR. FOX: All right. I don't believe I have any other questions.

MR. KOSTEL: Is it in the record when the Cadillac was sold? I think I got it in earlier.

THE WITNESS: I think the date on the contract was December 12.

REDIRECT EXAMINATION

BY MR. KOSTEL:

Q December? That's my understanding. And the money was credited to your account on the --

MR. BRADBERRY: December 20th, $6,350.

BY MR. KOSTEL:

Q Did you ask them why they didn't pay off the Cadillac? You had your meeting right soon after that was financed.

A I think so, but I can't be sure.

Q What was Mr. Forrest's explanation for not having paid these off at the time the units were financed, like he had done on the others, as you have testified?

A Well, that's what should have been done.

Q What was his explanation for it?

A Well, they took what money was in there, debited, paid some repossessions, stuff, off of it and wasn't enough.

Q Repossessed cars that they stood to lose on?

A Yes, sir.

MR. KOSTEL: Thank you.

(Witness stood aside)

THE COURT: We'll take a short recess.

(Brief recess)

B. C. COX, after being first duly sworn, testified in behalf of Plaintiff Suttle, as follows:

DIRECT EXAMINATION

BY MR. KOSTEL:

Q State your name and address and occupation, please.

A Berkley C. Cox; 111 Nelson Drive, Newport News, Virginia; occupation, cashier, United Virginia Bank - Citizens and Marine.

Q How old are you?

A Forty-five.

Q How long have you been cashier at United Virginia Bank - Citizens & Marine?

A Approximately four and a half years.

Q That bank is located at what address?

A 2800 Washington Avenue.

Q Is Suttle Motor Corporation a customer of that bank?

A Yes.

Q Are you familiar with the two documentary drafts that have been introduced in evidence?

A Yes.

Q They were deposited in your bank, and I'll put some testimony on as to when. What happened to those drafts after they were deposited in your bank, according to your records?

A They were transmitted by a letter to --

Q Maybe we better take them one at a time. Let's take this No. 1 first.

A This was transmitted on the 20th of October, to the Richmond bank.

Q That would be United Virginia Bank - State Planters, in Richmond?

A Yes, sir.

Q When did they receive it? Is there any indication?

A I would say on the 22nd. This is State Planters' stamp.

Q 27th?

A No. 22nd. I would say they received it the same day they were transmitted.

MR. BRADBERRY: I object to "I would say."

A I do not know.

BY MR. KOSTEL:

Q What does the stamp on the back, dated October 27, 1972, indicate to you, if you know?

A To me, it would indicate their collectio number to the Poquoson bank.

Q All right. And what happened to that draft, if you know, subsequent to October 27, 1972?

A The next we were aware, the results of the draft were when we received the notice of charge back by State Planters on the 10th of January.

Q What year?

A '73.

Q That's the next you heard about that

draft?

A That's correct. The draft physically appeared to us on January 22nd.

Q What did you do after the draft -- did it come in the mail?

A By courier. This is our normal distribution.

Q From Richmond to you by courier?

A Yes, sir.

Q On January 22, 1973, what did you do, if anything, to that?

A We transmitted it directly to the Poquoson bank for collection.

Q Would that be redeposited?

A Trying to collect the item.

Q Was that by mail?

A Yes, sir.

Q And then what, if anything, happened to the draft after that, if you know?

A We received the draft back on the 26th, reflecting that the account was closed.

Q Reflecting that the account was closed?

A Yes.

Q When you got the draft on the 22nd, was

there any indication as to why it had not been collected, on the draft?

A Only thing we had was debit of advice charging our bank, indicating that the Bank of Poquoson no longer was accepting these drafts.

Q State Planters Bank in Richmond charged your account for this draft; is that right?

A Yes, sir.

Q And you, in turn, had to charge your customer's account the same amount?

A That's right.

Q Now, the second draft, when was that sent to your bank, State Planters in Richmond?

A The 22nd.

Q Of November, 1972?

A That's correct.

Q And there's a stamp there, it's got a big "S. P." on the back, dated November 27, 1972.

A The 27th is the date we sent it to the State Planters Bank.

Q And there's another red stamp, November 28, 1972, which is similar to the one you testified --

A That represents the collection item number to the Bank of Poquoson on the 28th.

Q November 28th?

BY THE COURT:

Q That means it was sent to the Bank of Poquoson on that date?

A Dispatched from Richmond, yes, sir.

BY MR. KOSTEL:

Q I think their testimony is they got it on the 30th, which is normal. So in order to save time, did this draft, was that included in the letter of January 10, 1973?

A That's correct.

Q And that was received by you, by courier, on the 22nd of January, 1973?

A That's correct.

Q And these two drafts were mailed by you on that date to --

A On the 22nd.

Q On January 22, 1973, and this draft, along with the first one, was received by you, from the Bank of Poquoson, marked "Account Closed"?

A Yes.

MR. KOSTEL: That's all the questions --

BY MR. KOSTEL:

Q Is it the policy of your bank to credit

the customer's account when he makes the deposit?

A Yes, sir.

Q And if the item is not collected, then you debit the account for the same amount?

A That's correct.

MR. KOSTEL: Thank you.

CROSS EXAMINATION

BY MR. BRADBERRY:

Q Mr. Cox, the reason that it is credited immediately to the customer's account and the customer has a right to draw against it is because it's a corporate account with a good client, isn't it?

A That's correct.

Q If I walked in and deposited a draft marked "For Collection Only," a documentary draft, as an individual, would I get instant credit on that item?

A No.

Q All right. So you do what most banks do when you've got car dealers, you give instant credit and you run it through your collection process?

A That's correct.

Q Why didn't you send the draft direct from here to Poquoson by mail, through your collection

teller?

A Our procedure is that we normally send, for these customers, our processing items to the Richmond bank for these collections.

Q All right. When you sent those drafts, forwarded, how many days did you tell State Planters Bank to collect that draft within?

A We did not indicate any specific --

Q Did you tell State Planters to tell Citizens any specific date when they were to collect?

A No.

Q In other words, when the deposit, when the draft is deposited with you, do you give instant credit and do you send it to your bank in Richmond, you've got instant credit? Right? Your bank has?

A That's right.

Q So at that point, neither the customer nor you care how long it takes to collect the draft, because everybody can draw against the funds?

A That's correct.

Q The only time anybody gets upset about these things is when they bounce. Right?

A That's correct.

Q It's just like -- in other words, you

treat them, in your banking facility, like a check, which is a demand item; is that not correct?

A Correct.

Q Now, the difference between a demand item and a draft item is important and I think, as a banker, that you can answer this. When a check comes into the bank, into your bank, you, as a banker, know that if there is no money in the account, you have to pay that check. Right?

A That's correct.

Q When a documentary draft of the type involved here comes into the bank, you know that you cannot pay that draft until authorized; is that not correct?

A That's correct.

Q So that on the one hand, you have a demand item that must be paid and upon which persons normally get instant credit, that is, a check. Right?

A Repeat the question, please.

Q All right. Let me rephrase it. You took a collection item, a documentary draft, payment of which is conditioned upon acceptance by the dealer who's giving the draft, and treated it in the same way as a check that anybody would write; is that not correct?

A That's correct.

Q And one of the reasons that you do that is because it allows the bank to increase or show a larger number of deposits, does it not, from a book-keeping standpoint?

A No, that's not the primary reason at all.

Q Well, it does increase your deposits?

A It does; that's correct.

Q It increases your balance at the end of the month?

A It does, yes.

Q And it continues a float, which is customary in the automotive business?

A It does create a float.

Q And, in fact, it perpetuates that float when you give the instant credit?

A That's correct.

Q And the only time a problem occurs in the automobile business is when the float stops someplace; isn't that right?

A I think we're missing one point. You're talking about a -- the time element and the only time we get excited about an item is when it's returned, but

collection items are treated in a little different manner -- without specific instructions, each bank may have a different policy on the number of days they will retain the item if they cannot collect the item. Our policy is a normal ten days, without specific instructions, we'll return the item.

Q That is, for drafts which come to you, to your bank down here, United Virginia - C & M?

A That's correct. We can only assume, when an item doesn't come back to us within a reasonable time, ten days at a maximum, that credit has been effected at the other end.

Q But you are not saying that ten days is the only criteria for a reasonable time?

A That's correct.

Q And, in fact, drafts deposited by Suttle in your bank for collection have remained outstanding for payment as long as forty-some days, prior to these drafts, have they not?

MR. KOSTEL: How would he know the answer to that? I don't see how he could know the answer to that.

THE COURT: If he doesn't, he can say so, I would think.

MR. KOSTEL: I think he said he didn't know.

THE COURT: I think he did.

A Not specifically, no. I think there were some. I don't know the dates on those.

BY MR. BRADBERRY:

Q But you think there have been some, have gone over forty days?

A There could be.

Q And nobody said a word of complaint?

A Of those that were returned?

Q No. Of those that went over forty days and were paid?

A Yes, we had occasion there were some.

Q And nobody complained because they had been kept forty days before they had been paid?

A Well, are we talking about specific drafts of Suttle?

Q What I am talking about, Mr. Cox, is that you didn't care whether it was thirty days, forty days, fifty, sixty days that the draft was outstanding, as long as it was paid?

A Well, I would not know this unless it were returned to me.

Q You wouldn't even care about that?

A That's correct.

MR. BRADBERRY: All right.

BY THE COURT:

Q You did testify, I believe, that you do not pay documentary drafts until you are authorized to do so?

A That's correct.

Q By your customer?

A Correct.

BY MR. BRADBERRY:

Q One other question, Mr. Cox: You did not routinely follow up on any documentary drafts that you sent to United Virginia Bank - State Planters for collection, did you?

A I did not on these specific drafts. We do, on certain other drafts that have specific instruction

Q But on these drafts, which contained no instructions, you had no routine or customary follow-up with the bank in Richmond to which you forwarded it?

A We had no reason to.

MR. BRADBERRY: All right.

Q Is that unusual?

A I would think so.

MR. COGDILL: Okay. That's all the questions I have.

BY THE COURT:

Q Let me ask you one other question, Mr. Cox. I'm speaking now about when it's your bank and an item is brought in to you and you would get instructions from your depositor, but if you didn't get any instructions within the ten days, you testified that you'd send it back. Right?

A Yes.

Q Would you notify the payee that you were sending the check back?

A No, sir, not necessarily.

Q So if this was, instead of Citizens Bank of Poquoson, were the Citizens and Marine Bank, payable to the order of Suttle Motor Corporation, the $6,800, in ten days you got no instructions and you sent this back, would you call Suttle's and tell them you have dishonored this, assuming, now, he wasn't your customer, Suttle?

A I would merely -- I'd try to collect, if I received notification that it was here. If there were no response, I would return the item.

Q All right. But I'm talking about the payee now. It says, "Pay to the Order of Suttle Motor Corporation." What I am saying is, when you sent this check back to the bank or Batts & Hockaday, wherever you sent it back to, to dishonor it, would you call up Suttle's and say, "I'm dishonoring a check that -- documentary draft, payable to you all, in the amount of $6,800"? Do you do that, in the normal course of your business, notify the payee?

A No, sir, I wouldn't.

THE COURT: All right.

REDIRECT EXAMINATION

BY MR. KOSTEL:

Q You don't notify the payee, because you assume that the notice to the payee's bank will be a party to the payee, don't you?

A I would think.

Q It's customary banking practice that the duty to notify the payee isn't on the collecting bank, but on the bank that the payee has a depository relationship with?

A That's correct.

Q Now, if you saw a customer in the

bank, say, twice a week, and you had his draft there and he had not authorized you to pay it and yet he hadn't authorized you to return it, but he would tell you, "Well, I'll let you know about that or pick that up soon or let you know," and he gave you this for a ten-day period, in other words, neither telling you to pay it nor return it, would you tell him you would have to return it after ten days?

MR. BRADBERRY: Are we being hypothetical now?

MR. KOSTEL: Yes, sir, based on the evidence. Evidence is Mr. Whitehead was in there almost every day.

MR. BRADBERRY: In other words, you are asking a hypothetical question?

MR. KOSTEL: Yes, sir.

BY MR. KOSTEL:

Q If he vacillated, would you tell him you'd have to send it back after ten days?

MR. BRADBERRY: That's not in evidence. Vacillation isn't in evidence.

BY MR. KOSTEL:

Q If he didn't tell you to pay it after

ten days?

A After ten days or twenty days?

Q After --

A I would find out what he was going to do about it. If he said he'd pick it up in a couple days --

Q Suppose he didn't pick it up in a couple days?

A I would give him another chance.

Q How much?

A One month.

BY THE COURT:

Q Wouldn't that depend on who the customer is, Mr. Cox?

A Yes.

BY MR. KOSTEL:

Q In other words, you are willing to take certain risks for certain customers that you are not willing to take for other customers?

A I'm saying, as we said before, when we're talking about ten days is the general policy, there are circumstances that would prevent you -- good business, I think -- to automatically return an item.

BY THE COURT:

Q If Al Brout came down with one, told you to hold it twenty days, I guarantee you would hold it?

A Yes, sir.

BY MR. KOSTEL:

Q You wouldn't hold it for someone in shaky financial conditions, would you?

A No, sir.

Q Mr. Cox, Suttle Motor Company has deposited other drafts in your bank like this, drawn on the Citizens Bank of Poquoson. Right?

A Yes, sir.

Q All right. And they were paid?

A Yes, sir.

Q Now, after this draft is paid by the drawee bank, this goes back to the maker, doesn't it, Batts & Hockaday, with some kind of stamp indicating it's been paid, like a check?

A Yes.

Q So isn't it true that you, as an officer of United Virginia Bank - Citizens and Marine, nor Suttle Motor Corporation, neither of you would know how long it took them to pay that check, if it was paid?

A I wouldn't know.

MR. KOSTEL: That's all.

RECROSS EXAMINATION

BY MR. BRADBERRY:

Q Mr. Cox, when you are the collecting bank and you have a draft like that to collect for Suttle Motor Company, a draft comes in you're going to present to Suttle, it has come through a dealer and couple of banks and finally comes to you and it's payable to Suttle and you're going to present it to Suttle and either pay it or send it back, now, what is your obligation, when you are the collecting bank, that is, presenting it to Suttle for payment or dishonor, to the dealer who has forwarded the draft to you for collection through the chain?

MR. KOSTEL: I didn't understand the question.

BY MR. BRADBERRY:

Q Your statement was, Mr. Cox, you do not notify the payee of dishonor. The reason you do not notify the payee of dishonor is because as a collecting bank, you have no obligation to the payee, do you?

A That's correct.

Q You have an obligation to your customer, Suttle, and your bank which has sent it to your -- to the bank which has sent it to your bank for collection?

A That's correct.

Q But you have no obligation to anyone else in the chain?

A No.

Q And you do not customarily give notification to anybody else in the chain?

A No.

MR. BRADBERRY: Nothing else, Your Honor.

REDIRECT EXAMINATION

BY MR. KOSTEL:

Q You don't mean to say you don't give notification of dishonor to the bank that sent it to you, do you?

A I didn't understand the question to be that.

MR. BRADBERRY: My question was, to the customer and the bank forwarding it to him.

MR. KOSTEL: You said the bank that --

THE COURT: No, no. If he did, he didn't mean it. He's just gone over what I went over.

MR. BRADBERRY: I'm sorry, Judge.

THE COURT: Which is what is alleged in paragraph three of your pleading, notifying Suttle of dishonor. That's what I was asking him about. Are we through with Mr. Cox? I'm sure he wants to get back to Richmond. Oh. He's here. I'm sorry.

MR. BRADBERRY: Your Honor, we have a witness from Richmond, who would like to return tonight. If counsel would have no objection, I wonder if we could take it out of turn?

THE COURT: Let's see if we can get rid of Mr. Cox first. Everybody through with Mr. Cox?

(Witness excused)

MR. WITTAN: We would have no objection to taking the lady from Richmond out of order.

THE COURT: Maybe Mr. Kostel is about through with his case.

MR. KOSTEL: I think, in view of some questions, I would like to amend my motion for judgment.

THE COURT: Let's don'c do it yet.

MR. KOSTEL: I just want to put "or to the plaintiff's bank."

MICHAEL SUTTLE, JR., after being first duly sworn, testified in behalf of Plaintiff Suttle, as follows:

DIRECT EXAMINATION

BY MR. KOSTEL:

Q State your name, address and occupation.

A Michael Suttle, Jr.; 111 Riverside Drive, Newport News; automobile executive.

Q With Suttle Motor Corporation?

A Suttle Motor Corporation.

Q You bought a lot of cars from Batts & Hockaday -- I mean, you sold a lot of used cars to Batts & Hockaday over the years, haven't you?

A Yes.

Q You took these two documentary drafts for the sale of two units?

A Yes, sir.

Q What was your understanding -- who did you deal with -- Mr. Sweeney, on these two?

A I'm sure, yes.

Q What was your understanding as to how the transaction would be handled?

A We would deposit the draft in our local bank and our bank would send it to the Citizens Bank of Poquoson for collection. This was our understanding.

Q Why was the title put in the envelope?

A In our business, with the title, to ensure payment, and title, actually, on a draft, put it in the bank, the title ensures payment to the dealer or to the depositor.

Q In other words, he can't get the title until the draft is paid; is that right? Is that why it's put in the envelope?

A That's right. And we are assured of our money.

Q Right. When did you deposit the $6,800 draft in United Virginia Bank - Citizens and Marin

A October 19.

Q '72?

A Yes.

Q When did you deposit Exhibit No. 2?

A November 21.

Q November 21, 1972?

A Yes.

Q And was your account credited at the United Virginia Bank - Citizens and Marine?

A Yes.

Q At the time you made the deposit?

A Yes.

Q What is the next thing you heard about the drafts?

A We heard, the end of January, that they weren't paid.

Q January 1973?

A Yes.

Q Who notified you -- your bank?

A Yes. C & M.

Q United Virginia Bank - Citizens and Marine?

A Yes.

Q Are they still unpaid?

A Yes.

Q You don't have the cars, either, do you?

A No, sir.

MR. KOSTEL: Your witness.

CROSS EXAMINATION

BY MR. BRADBERRY:

Q Mr. Suttle, you had a regular practice of allowing Mr. Sweeney to take the cars for sale and allowing Mr. Sweeney to put them on his lot at Batts & Hockaday?

A Yes.

Q The cars could be sold to members of the public. Correct?

A Explain that a little fuller, sir.

Q Once they went to Mr. Sweeney's lot, Mr. Sweeney could sell them to anybody that walked out on the lot he wanted to?

A Sure.

Q And you had a habit of accepting drafts for payment?

A Right.

Q And you deposited the drafts?

A That's right.

Q And the bank said, "Mr. Suttle, here's your money"?

A That's right.

Q And you didn't give a darn after that, did you, as long as it was paid, you couldn't care less when it was paid?

A In the automobile circle --

Q My question, Mr. Suttle, is very simple. You were not concerned with when it was paid, as long as it was paid?

A Well, I was concerned.

Q You were?

A Yes.

Q Did you follow up to see when the drafts you had received were paid?

A No.

Q Did you direct your bank to follow up?

A No.

Q Did you choose to use a form of documentary draft which said "Pay Within Ten Days"?

A Yes.

Q Are either of those drafts in that format?

A A reasonable time, to me, is ten days.

Q Where does that say "ten days"?

A Let me explain, Mr. --

Q Mr. Suttle, does it say "ten days" on

here?

A No, it doesn't. But reasonable time, according to banking principles --

Q Mr. Suttle, answer the questions, please. Did you tell your bank that in the collection of drafts which you deposited, you thought ten days was a reasonable period of time?

A No.

Q Did you tell your bank -- did you tell the collecting bank that, "I would like it paid in ten days or I want it returned"?

A No.

Q My basic question, then, Mr. Suttle, is that you never did anything to assure that you had payment in that ten days, did you?

A May I explain something?

Q Will you please answer the question?

A Repeat the question.

Q You never did anything to assure that you would be paid on a draft within ten days?

A Yes. We did something. We deposited it in the bank.

Q And you got instant credit?

A That's right.

Q And when you got instant credit, you could spend the money and you weren't concerned about when it was ultimately paid?

A I wouldn't say that.

Q Well, Mr. Suttle, did you know these two were not paid?

A We knew the money was forthcoming, with the title in that envelope.

Q Did you know these two drafts had not been paid?

A No, sir.

MR. KOSTEL: Not until January 1973.

BY MR. BRADBERRY:

Q You had no idea?

A That's right.

Q Mr. Suttle, you know the status of all of your cars on the lot most of the time, don't you?

A Yes, sir.

Q What cars are on inventory, etc.?

A Yes, sir.

Q And you also know whether or not cars are paid for, don't you?

A Yes.

the Court's permission --

THE COURT: All right. I'm overruling all motions.

EVIDENCE ADDUCED IN BEHALF OF CITIZENS BANK OF POQUOSON

MARIE JOHNSON, after being first duly sworn, testified in behalf of Citizens Bank of Poquoson, as follows:

DIRECT EXAMINATION

BY MR. BRADBERRY:

Q Tell us your name, please.

A Marie Johnson.

Q Mrs. Johnson, would you please speak directly into that microphone, because we have a problem with the air conditioning and everybody back here has got to hear you. Where are you from, Mrs. Johnson?

A From Richmond, Virginia.

Q Were you formerly employed in Richmond Virginia?

A Yes, sir.

Q By whom were you employed, ma'am?

A United Virginia Bank.

Q State Planters?

A State Planters, yes.

Q What was your job at United Virginia Bank - State Planters?

A I was the domestic collection teller.

Q And in the course of performing your duties, did you have occasion to handle documentary drafts?

A Yes, sir.

Q Did you have occasion, in the performance of your duties, to deal with United Virginia Bank - Citizens and Marine and then the Citizens Bank of Poquoson?

A Yes, sir.

Q And in what way did you deal between these two banks?

A Well, I handled some envelope drafts for them.

Q They would come from United Virginia?

A Not directly to me, no.

Q All right. How would they come?

A I got them down to me from our check clearing department, and then when I got them, I had to find what bank they were to be sent to for collection and then I entered them for collection.

Q All right. And did you have an occasion to send any to Citizens Bank of Poquoson?

A Yes, sir.

Q Do you recall any involving Suttle Motor Corporation in Newport News?

A Well, I always had several for those people, over a number of years.

Q All right. And do you recall any that were to be paid by a Batts & Hockaday Motors, at Citizens Bank of Poquoson?

A Yes. I remember some.

Q Would you tell us, please, what you did in the normal course of your business, in handling those drafts?

A Well, when I got them down from check clearing, I would take them and send them off to the Citizens Bank of Poquoson or whichever bank they were drawn on, and then ask them to collect them.

Q And how long were they instructed to take for collection?

A I didn't give any instructions. As long as they came down from check clearing department, I had no instructions as to how long to give the people to pay.

MR. BRADBERRY: Mrs. Johnson, answer any questions Mr. Kostel has, Mr. Cogdill, Mr. Fox and Mr. Wittan.

the collecting agency for, too?

A Well, similar to that, yes. Each bank has their own way of sending tracers.

Q Okay. But you always send tracers?

A Yes, sir.

MR. COGDILL: Okay. I think that's all the questions I have.

BY MR. KOSTEL:

Q Mrs. Johnson, you don't know which drafts you got back after the first phone call, do you?

A Well, if I can remember right, there was a series of about six, or whatever it was, and I don't remember, no, which ones I got back first. I can't remember.

MR. KOSTEL: Thank you. May she be excused?

MR. BRADBERRY: I have just one question on redirect.

REDIRECT EXAMINATION

BY MR. BRADBERRY:

Q Mrs. Johnson, you testified about a system that you have that you regularly used. When you

sent tracers or called Citizens Bank of Poquoson, did you customarily receive an answer to your inquiry?

A Yes.

Q When you received an answer to your inquiry and the answer was that the bank was in contact with the customer and the customer indicated he was going to pick up the draft --

A Yes.

Q Was it possible, with your system being used at State Planters, to go beyond the thirty-day period that we have discussed as generally being the time within which you tried to collect?

A Well, the only time I would do that is when I made a phone call and they told me they were waiting for their customer to pick it up. I wouldn't go too much over the thirty days, you know, if I could help it.

Q But it was possible, with your system, to go beyond the thirty days? The thirty days wasn't an absolute cut-off time?

A No, it wasn't an absolute cut-off, no.

MR. BRADBERRY: Thank you, ma'am. I have nothing else.

Q Okay. Did you know Batts & Hockaday was the co-signer on the paper that had been signed as a result of Jones' deal?

A Yes, sir.

Q Okay. Now, was there anything else you could have done to have gotten the title from the Citizens Bank of Poquoson?

A Short of stealing, I don't believe so, sir.

Q Okay. Let me ask you this:

BY THE COURT:

Q Why couldn't you have paid the check?

A Sir?

Q Why couldn't you have paid this $4,000 check?

A I did not have funds in the Batts & Hockaday account, after I became aware that they had withdrawn it for --

Q Well, you mean there wasn't anything you could do, because you didn't have the money to pay the check?

A Right.

BY MR. COGDILL:

Q Let me ask you this, Mr. Sweeney: Now,

was it the usual custom of the Citizens Bank of Poquoson to debit the account of -- if you had already financed a deal with the Citizens Bank of Poquoson and a draft came in as a result of that financing, did they usually call you and tell you it came in or was the agreement between the bank and you that when the draft --

MR. BRADBERRY: I object to Mr. Cogdill testifying. Ask him the question.

MR. COGDILL: Will you let me finish, and I will?

THE COURT: Well, I think your question is in statement form.

BY MR. COGDILL:

Q Let me ask you this, Mr. Sweeney: If you had financed a car and you did not have a title, but it was in a draft coming to the bank, what was the arrangement between Batts & Hockaday and the bank, in reference to that draft when it arrived, if the deal had already been financed?

A Well, usually, if the deal had already been financed, the next time Mr. Whitehead went to the bank, he would go through the draft ledger and sign the debit memo for the draft, to pick the draft up.

Q All right. Did you always sign the

memorandum or would they go ahead, if they had already financed the deal, and debit it and take it out as quick as the draft came in?

A We did not always sign a memorandum, because I can recall one specific case where we didn't. Normally, they did not send back to us the draft with the title in it in the mail. They required somebody to pick it up. There was only Mr. Whitehead or myself that went to the bank; therefore, there was no reason for us not to sign a debit memo, but there's one specific case where it was not done and there may have been others. That was on a Corvette sold to a man --

BY THE COURT:

Q While we are talking about this, this was financed through the bank, you all were to come in, pick up this draft on the $4,000 --

MR. KOSTEL: On it and the $6,800.

THE COURT: Only one I've got before me was the $4,000 one.

MR. KOSTEL: I thought the $6,800 --

A Your Honor, that $4,000 draft came in the bank after the contract had been put into the bank; in other words, it should have been picked up by Batts &

Hockaday when it got there, and for some reason it wasn't. However, it was financed. It wasn't debited out of the account nor recognized at that time. All right. On the Cadillac, the $6,800 draft, that was presented to the bank on December 12 or December 13, was discounted by the bank and the title was supposed to be picked up at the same time. The reason it wasn't picked up is because Mr. Riggins had informed Mr. Forrest to pay off certain delinquent accounts and they were using all the funds in the bank for paying off the accounts and not paying the draft. So, therefore, they had taken the deal and were denying us the opportunity, by taking our money away, to pick up the draft and pay Suttle Motor Corporation for the car.

BY THE COURT:

Q Well, everything they took the money for you owed, though, at the time?

A That's a matter for debate, Your Honor, which will be tried next month.

MR. COGDILL: This is a copy of the dea Judge, on the Cadillac.

BY MR. COGDILL:

Q Mr. Sweeney, on all of the repossessed

Q All right. Now, there were other items that the bank debited your account for?

A That's right.

Q And you were aware of the debits, because you were notified, Mr. Whitehead was notified or you got a debit slip with your bank statement; is that right?

A Oh, we got a debit slip with the bank statement, yes, sir.

Q And you didn't complain about the debits, because you knew the debits were coming?

A No, sir. I did complain about the debits.

Q As to the $4,100, you got that money into your account, did you not?

A Yes, sir.

Q When that contract was taken to the bank, why wasn't the bank told, "Here's a contract. A draft will be coming in that I want to pick up"?

A Mr. Bradberry, I don't know that the bank wasn't told that, since I didn't take the contract to the bank.

Q Mr. Whitehead did?

A Yes, sir.

Q How about the $6,800?